National Energy Board | Office national de l'énergie

Reasons for Decision

TransCanada PipeLines Limited

RH-3-2004

December 2004

North Bay Junction Application

Canada

105-01517/

National Energy Board

Reasons for Decision

In the Matter of

TransCanada PipeLines Limited

Application for approval to establish a new receipt and delivery point, the North Bay Junction, and for the corresponding tolls for services to and from the point.

RH-3-2004

December 2004

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Abbreviations

ADR	Appropriate Dispute Resolution
ANE	Alberta Northeast Gas Limited
Board or NEB	National Energy Board
CA	Cogenerators Alliance (consists of Tractabel Power Inc., TransAlta Energy Corporation, Lake Superior Power Limited Partnership, and Cardinal Power of Canada, L.P.)
CAPP	Canadian Association of Petroleum Producers
Cargill	Cargill Power and Gas Markets
CDA	Central Delivery Area
Coral	Coral Energy Canada Inc.
Eastern Utilities	Collectively refers to EGD, Gaz Métro and Union
EDA	Eastern Delivery Area
EGD	Enbridge Gas Distribution Inc.
FT	Firm Transportation
Gaz Métro	Société en commandite Gaz Métro
Gaz Métro LP	Gaz Métropolitain and Company, Limited Partnership
GJ	Gigajoule
GLGT	Great Lakes Gas Transmission
IGUA	Industrial Gas Users Association
IT	Interruptible Transportation
LBA	Limited Balancing Agreement
LDCs	Local Distribution Companies
Mainline	TransCanada's Mainline natural gas transmission system
NBJ	North Bay Junction
NCDA	North Central Delivery Area
NDA	Northern Delivery Area
NEB Act	*National Energy Board Act*

Nexen	Nexen Marketing
NOL	Northern Ontario Line
OBA	Operational Balancing Agreement
Ontario	Minister of Energy for the Province of Ontario
Quebec	Procureur général du Québec
STFT	Short Term Firm Transportation
STS	Storage Transportation Service
SWZ	Southwest Zone
TBO	Transportation by Others
TJ	Terajoule
TQM	Trans Québec & Maritimes Pipeline, Inc.
TransCanada	TransCanada PipeLines Limited
TTF	TransCanada Mainline Tolls Task Force
Union	Union Gas Limited
U.S. or USA	United States of America
WCSB	Western Canada Sedimentary Basin

Glossary of Terms

AECO	A North American gas marketing centre located in Alberta.
Consultant's Report	Report produced for TransCanada Corporation entitled "Building Alignment on the Northeastern Gas and Power Growth Strategy".
Cost of Service	The total cost of providing service, including operating and maintenance expenses, depreciation, amortization, taxes, and return on rate base. Generally, the cost of service of a pipeline is the same as its revenue requirement.
Dawn	A North American gas marketing centre located in Southern Ontario.
Delivery Area	A geographic area within a toll zone that is comprised of multiple delivery points where shippers receive delivery of their natural gas.
Delivery Point	A point within a delivery area where TransCanada delivers natural gas pursuant to a gas transportation contract.
Demand Charge	A monthly charge which normally covers the fixed costs of a pipeline. The demand charge is based on the daily contracted quantity and is payable regardless of quantities transported.
Eastern Short-Haul	Short-haul service with a delivery point in the Eastern Zone or an Eastern export point.
Empress	Inlet to the TransCanada Mainline near the Alberta-Saskatchewan border.
Integrated System	Facilities owned directly by TransCanada as well as the contractual entitlements to transport natural gas on the GLGT, Union and TQM systems.
Load Centre	A location within each toll zone or domestic delivery area calculated based on the energy-weighted average distance of haul for firm service deliveries during the base year.
Load Factor	The ratio of the average contract utilization to the maximum contract quantity for the same period, usually expressed over a year and as a percentage.
Long-Haul	Transportation service originating at Empress or a Saskatchewan receipt point.

Open Season	A process in which a pipeline company offers either existing or new capacity to the market and receives bids for that capacity from market participants.
Rate Base	The amount of investment on which a return is authorized to be earned. It usually consists of net plant in-service, plus an allowance for working capital.
Receipt Point	Either a single point or a delivery area at which TransCanada receives natural gas pursuant to a gas transportation contract.
Revenue Requirement	The amount sought to be recovered in the tolls which will reimburse the company for its cost of service.
RH-1-2002	NEB proceeding on TransCanada's 2003 Tolls and Tariff Application.
RH-2-91	Interprovincial Pipe Line Limited's (now Enbridge Pipelines Inc.) 1992 Tolls Application.
RH-2-92	NEB proceeding on TransCanada's 1993 Tolls Application.
RH-4-2001	NEB proceeding on TransCanada's 2001-2002 Fair Return Application concerning Cost of Capital for the Mainline.
RH-4-86	NEB proceeding on Interprovincial Pipe Line Limited's (now Enbridge Pipelines Inc.) 1987 Tolls Application.
RH-R-1-2002	NEB proceeding on TransCanada's Application for Review and Variance of the Board's RH-4-2001 Decision and Related Orders.
Short-Haul	Transportation service originating at locations other than Empress or a Saskatchewan receipt point.
Storage Transportation Service	A service which allows FT contract holders, who have their own or contracted access to storage facilities, to move gas in and out of storage to meet seasonal demands while still retaining a high load factor.
Tariff	The terms and conditions under which the service of a pipeline are offered or provided, including the tolls, the rules and regulations, and the practices relating to specific services.
Toll	The price charged by a pipeline company for the use of its facilities.

Toll Zone	For the purposes of setting tolls, long-haul domestic FT shippers pay tolls according to the toll zone to which gas deliveries are made. All deliveries within the same toll zone pay the same toll.
Tolls Task Force	A joint industry task force initiated by TransCanada. Its membership is comprised of a wide cross-section of the natural gas industry, including representatives of the producing, marketing, brokering and pipeline segments of the industry, provincial governments and local distribution and industrial end-use customers.
Western Short-Haul	Transportation service with a delivery point in the Saskatchewan Zone, Manitoba Zone, or adjacent export points (e.g., Emerson)

Recital and Appearances

IN THE MATTER OF the *National Energy Board Act* (NEB Act) and the Regulations made thereunder; and

IN THE MATTER OF an application dated 15 September 2003, as amended 31 March 2004, by TransCanada PipeLines Limited (TransCanada) pursuant to paragraph 60(1)(b) of the NEB Act, for approval to establish a new receipt and delivery point, the North Bay Junction (NBJ), and the corresponding tolls for services to and from the point, as well as to remove North Bay from the existing Northern Delivery Area described in Section X, Subsection 1, of TransCanada's Mainline Transportation Tariff General Terms and Conditions, all effective 1 November 2004; and

IN THE MATTER OF Hearing Order RH-3-2004.

Heard in Montreal, Quebec, on 16, 17, 18, 19, 20, 24, 25, 26, 27, 30, 31 August 2004, and 1, 2 September 2004, and in Calgary, Alberta, on 8, 9 and 10 September 2004;

BEFORE:

J.-P. Théorêt	Presiding Member
D.W. Emes	Member
G. Caron	Member

Appearances	**Company**	**Witnesses**
C.K. Yates, Q.C. D.A. Holgate	TransCanada PipeLines Limited	D. Ferguson C. Frew J. Reed T. Robinson R. Whitmore G. Zwick
N.J. Schultz	Canadian Association of Petroleum Producers	R. Moore P. Nettleton A. Safir C. Worthy
P. Thompson, Q.C. V.J. DeRose	Industrial Gas Users Association	R. Cooper P. Fournier J. Latreille M. Passi
J. Carmichael	Alberta Northeast Gas, Limited	
C. Worthy	BP Canada Energy Company	

Appearances	Company	Witnesses
R.J. King	Cogenerators Alliance	M. Stauft U. Valiente
J. Farrell	Enbridge Gas Distribution Inc.	D. Charleson C. Cicchetti B. Henning R. Rowe M. Sloan
B. Fraser	EnCana Corporation	
M. Perlman	New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation	
S. Young	Nexen Marketing	
L.-A. Leclerc L.-C. Ratelle	Société en commandite Gaz Métro	C. Cicchetti B. Henning L. Mercier M. Sloan
L.E. Smith, Q.C.	Union Gas Limited	S. Baker C. Cicchetti B. Henning M. Isherwood M. Sloan
J.C. Turchin E. Sweet	Minister of Energy for the Province of Ontario	
M. Bouchard R. Richard	Procureur général du Québec	
M.A. Yuzda L.C. Bell J. Hanebury, Q.C.	National Energy Board	

Chapter 1

Introduction

1.1 Background

TransCanada PipeLines Limited (TransCanada) owns and operates the Mainline natural gas transmission system (Mainline), which extends from the Alberta border across Saskatchewan, Manitoba, Ontario, through a portion of Quebec and connects to various downstream Canadian and international pipelines.

In addition, TransCanada's integrated system includes contractual entitlements to transport natural gas on: the Great Lakes Gas Transmission (GLGT) system from Emerson, Manitoba to St. Clair, Michigan; the Union Gas Limited (Union) system from Dawn, Ontario to Parkway, Ontario and to Kirkwall, Ontario; and the Trans Québec & Maritimes Pipeline, Inc. (TQM) system from St-Lazare to St-Nicolas and East Hereford, all located in Quebec. Figure 1-1 contains a map of TransCanada's integrated system.

The Transportation Access Procedures in TransCanada's Mainline tariff establish the process by which service requests for existing and new capacity are administered. These procedures provide that capacity will be offered through an open season process.

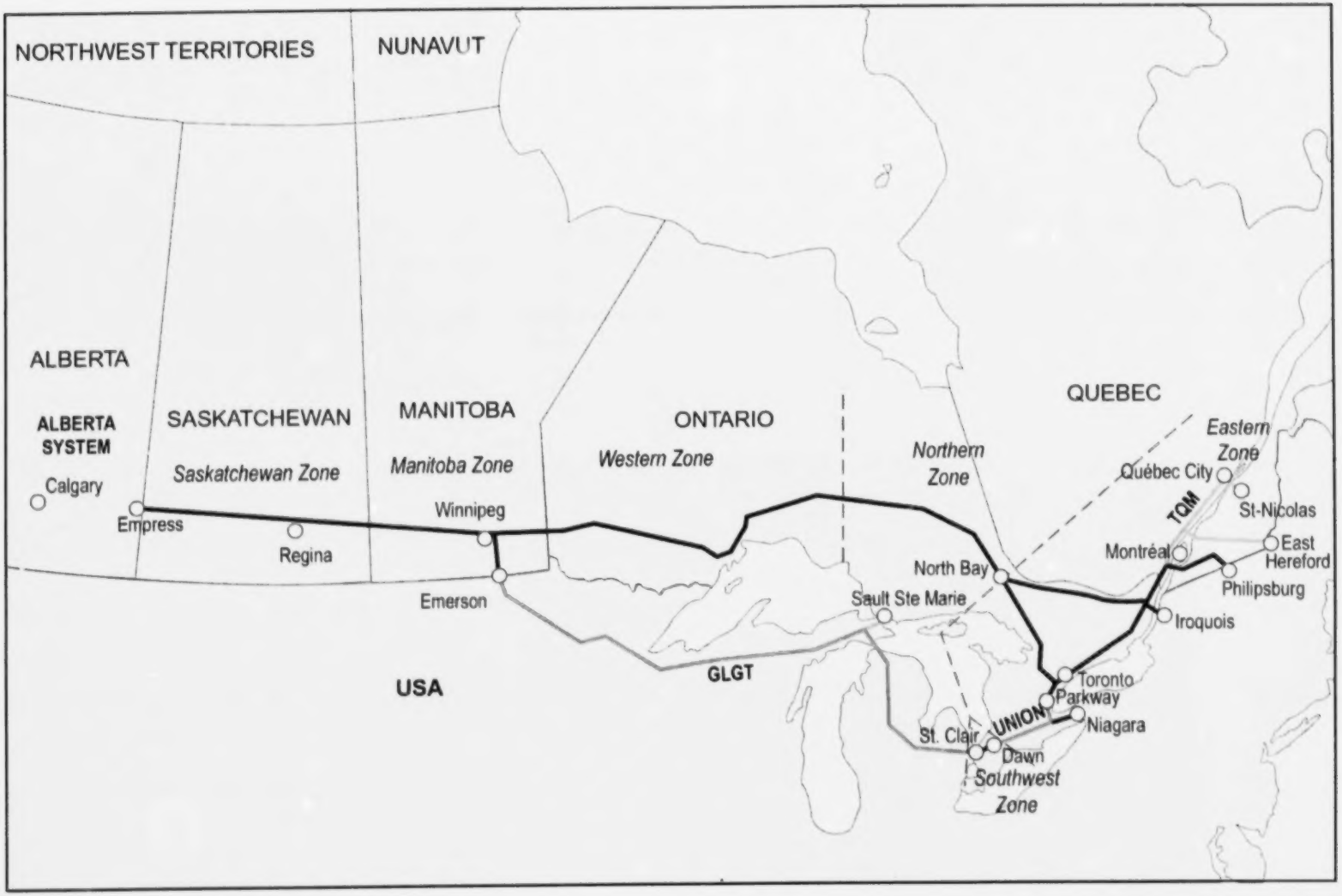
On 10 July 2003, TransCanada posted a notice to customers stating that it intended to hold an open season for existing and new capacity that would commence on 17 July 2003. As part of this notice, TransCanada advised parties that the option of contracting from domestic delivery areas was available.

On 16 July 2003, the Board received a copy of a letter sent to TransCanada from Gaz Métropolitain and Company, Limited Partnership (Gaz Métro LP) concerning TransCanada's open season announced on 10 July 2003. In its letter, Gaz Métro LP expressed concern over TransCanada's apparent adoption of new receipt points, notably the Northern Delivery Area (NDA), not currently contained within TransCanada's Mainline tariff.

The Board received a copy of a letter dated 22 July 2003 from TransCanada to Gaz Métro LP in which TransCanada offered to meet with Gaz Métro, LP to discuss its concerns.

On 7 August 2003, the Board received formal complaints from Cargill Power and Gas Markets (Cargill) and the Canadian Association of Petroleum Producers (CAPP) concerning the new receipt points offered in the open season. The Board received further letters of complaint from the Industrial Gas Users Association (IGUA) on 13 August 2003 and Coral Energy Canada Inc. (Coral) on 19 August 2003.

Figure 1-1
TransCanada's Integrated System



All those who sent in complaints submitted that the new receipt points were not contained within the Mainline tariff, and thus, the proposed open season contravened the *National Energy Board Act* (NEB Act). Further, they took issue with the process by which TransCanada introduced the new receipt points. CAPP, Cargill, Coral and IGUA requested that the Board intervene in the open season to disallow these service offerings until such time as they receive adequate regulatory scrutiny. IGUA also asserted that TransCanada was offering short-haul transportation from Dawn, even though TransCanada does not have the physical capacity on the Union system to support this service.

On 14 August 2003, the Board issued a letter to TransCanada requesting additional information to clarify the purpose for, and method by which TransCanada offered, new contracting options through the open season. Further, the Board requested that TransCanada respond to the concerns and issues raised by Gaz Métro LP, CAPP, Cargill and IGUA.

TransCanada responded by letter dated 22 August 2003 disagreeing with the complainants' assertions and submitted that its actions were not inconsistent with the requirements of its Mainline tariff, established regulatory practices or the requirements of the NEB Act. However, TransCanada advised that it would file an application for Board approval to establish certain points in domestic delivery areas as receipt points and to establish corresponding tolls for services to and from these points. TransCanada also advised that it would amend the terms of the open season to condition any contracts for services from new receipt points on obtaining any necessary Board approvals. TransCanada further proposed to raise with the Tolls Task Force (TTF) the issue of how new receipt and delivery points should be established on the TransCanada system.

In its 4 September 2003 letter to TransCanada, the Board indicated that it had accepted TransCanada's proposal and anticipated receipt of an application.

On 15 September 2003, TransCanada filed an application for approval to establish the North Bay Junction (NBJ) as a new receipt and delivery point and for approval of the associated tolls for services to and from this point.

On 17 September 2003, the Board issued a letter noting that the application varied from what was originally contemplated in TransCanada's 22 August 2003 proposal and requesting comments on the appropriate process to deal with the application. Letters of comment were received by the Board from a number of parties. After considering the views of those parties who made submissions, the Board indicated in a letter dated 26 September 2003 that it would hold a facilitated workshop to discuss the issues raised in the letters of comment. The Board invited comments on the content and format of the workshop.

On 10 October 2003, the Board issued a letter outlining the details of the full day workshop to take place on 23 October 2003 in Toronto, Ontario. At the workshop, four questions related to the issues, process and timing of the application were addressed. The Board released a facilitator's report of the workshop on 13 November 2003.

On 14 November 2003, the Board issued a letter stating that any regulatory process established to consider the NBJ proposal should address whether the Mainline's existing toll design remains

appropriate and what changes, if any, are required. The Board identified six issues for consideration (see Section 1.3) and decided to stay the processing of the NBJ application until such time as TransCanada filed sufficient information to address the broader toll design issues.

On 27 November 2003, TransCanada advised the Board that it intended to file additional evidence by 31 March 2004 in support of the NBJ application. On 31 March 2004, TransCanada updated its NBJ application.

On 19 April 2004, the Board issued the RH-3-2004 Hearing Order, stating that it would convene an oral public hearing commencing 9 August 2004 to consider the NBJ application. At the request of TransCanada, the commencement of the hearing was subsequently delayed to 16 August 2004. The evidentiary portion of the hearing took place in Montreal, Quebec from 16 August to 2 September 2004 and argument took place in Calgary, Alberta from 8 to 10 September 2004, for a total of 16 hearing days.

1.2 Overview of the Application

The revised application, filed by TransCanada on 31 March 2004, requested approval to remove North Bay from the NDA and to establish NBJ as a new receipt and delivery point with corresponding tolls for services to and from the point. NBJ is a physical point on the Mainline located at North Bay Compressor Station 116.

TransCanada also provided its views on the five broader toll design issues listed in the Board's letter dated 14 November 2003. These views were compiled in a section of the application entitled Additional Information. TransCanada noted that its views on these five issues were provided within the context of its decision not to continue its efforts to develop a new, comprehensive business and regulatory model. Instead, TransCanada stated that it would pursue strategies for achieving additional competitiveness through improvements to its existing toll design and tariff structure as necessary or desirable.

1.3 List of Issues

In its RH-3-2004 Hearing Order, the Board identified, but did not limit itself to, the following issues for discussion in the proceeding:

1. The appropriateness of the existing zonal toll structure for domestic deliveries.

2. The appropriateness of the existing toll design for short-haul services and of TransCanada's short-haul contracting practices.

3. The appropriateness of the North Bay Junction proposal and any alternate proposals.

4. The appropriateness of offering Firm Transportation, Interruptible Transportation and Short Term Firm Transportation services using domestic delivery areas as receipt points.

5. The potential impact of any changes to toll design on tollpayers and other services.

6. The appropriate process for implementing toll design changes for the Mainline.

Issue 3 incorporated the addition of the wording "and any alternate proposals" following a request dated 7 April 2004 from Union. As more fully detailed in the following chapters, proposals to grant receipt and delivery point status to Parkway and St-Nicolas were made by Union, Enbridge Gas Distribution (EGD) and Société en commandite Gaz Métro (Gaz Métro) (collectively the Eastern Utilities). EGD also sought the designation of certain domestic delivery areas as receipt point for the purposes of storage injection.

Chapter 2

Context, Issues, Principles and Expected Outcomes

2.1 Context

As set out in Chapter 1 of these Reasons for Decision, TransCanada owns and operates the Mainline, a high-pressure natural gas transmission system which extends from the Alberta border, near Empress, across Saskatchewan, Manitoba, Ontario, through a portion of Quebec and connects to various downstream Canadian and international pipelines. TransCanada's integrated system is comprised of facilities that are owned directly by TransCanada (e.g., the Northern Ontario Line (NOL)) as well as contractual entitlements to transport gas on the GLGT, Union, and TQM systems.

For much of its operating history, the Mainline was the major source of egress for gas from the Western Canada Sedimentary Basin (WCSB) traveling to eastern markets in Canada and the United States. Throughout the 1990s, additional pipeline capacity was built, culminating with the commencement of service of the Alliance and Vector pipelines in 2000. As a result, the Mainline has moved from an environment that conformed roughly to the environment contemplated by traditional cost of service regulation, to one in which pipe-on-pipe competition for both supply and markets exists. As the Board has stated on previous occasions, this environment may be referred to as "competition amongst the few".

This proceeding has illustrated the complexity of the issues that arise from, and need to be addressed in, an environment that conforms neither to monopoly cost of service regulation nor to normal competition. In the current environment in which the Mainline and its shippers operate, it is not always clear which model should apply or the extent to which the most applicable model should be modified to reflect the mixed system. For certain areas, it may be clear that little if any regulatory input is required (i.e., competitive forces are sufficient so that the market should be allowed to work); while for others, the continued existence of significant market power requires more traditional cost of service regulation or active regulatory intervention. In some cases there needs to be an assessment of the benefits and costs associated with each model and a decision made as to which is most likely to be in the public interest.

TransCanada's application was not supported by any intervenor active at the hearing. There was disagreement at the hearing on even the scope of the issues presented for adjudication by the Board. TransCanada saw a narrow scope: the approval of a new receipt and delivery point (NBJ) which could allow it to address the problem of excess capacity on the NOL and give the market an additional contracting point for short-haul. Intervenors saw a wide scope: the lack of transportation capacity from Dawn, the degree and utilization of market power by TransCanada, the relationship between the management of the Mainline, unregulated affiliates, and TransCanada Corporation, and the appropriate use of the integrated system, amongst others.

The Board envisaged that the revision to the list of issues which occurred in the pre-hearing stage would effectively circumscribe the issues in a way that parties could understand and support. At the end of the proceeding, however, it was clear that the question of the scope of what was before the Board in this proceeding, in and of itself, was also the subject of dispute.

2.2 Issues

In the Board's view, the issues addressed in this hearing fall into two broad categories, market issues and corporate issues, both of which reflect the increasing complexity of the regulatory environment.

The market issues addressed in this proceeding are those one would expect to arise in a mixed competitive market. They include, among other matters, the question of adding one or several new receipt and delivery points, the toll treatment of volumes received at and delivered from these points, the related rights and obligations of existing and future shippers, and load balancing. These types of issues arise frequently and are expected in the regulatory arena.

The second set of issues stems from more complex and sensitive matters related to corporate structure and behaviour, specifically the potential for abuse of power, the appropriateness of affiliate transactions, and transparency.

Both types of issues must be addressed with rigour, objectivity and impartiality, using the Board's expertise and established regulatory methods. The second type of issue, however, is difficult and of significant concern, whether the allegations of possibly inappropriate conduct are found to be valid or not. These issues require a disposition which addresses the substance and appearance of future expected behaviours.

The following chapters address and dispose of each of the specific issues raised in the proceeding, based on the specific facts and circumstances of this case.

2.3 Guiding Principles

In arriving at its decisions, the Board has had regard to the requirements of the legislation and its established regulatory framework, as stated in past decisions. In addition, the Board has considered the principles proposed by parties in this proceeding. The primary guiding principles which have informed the Board's decisions are set out below. In the Board's view, the application of these principles to the facts of this case provides an effective framework for decision-making and in arriving at fair and objective outcomes.

Requirements of the NEB Act

The Board's decisions are governed by the requirements of the NEB Act; notably, the requirement that tolls must be just and reasonable, and must not be unjustly discriminatory.

Cost Causation

As set out in previous Reasons for Decisions such as RH-4-86 and RH-2-92, the Board is of the view that tolls should be guided by the principles of cost-causation and user pay.

Economic Efficiency

As set out in its corporate goals, the Board is of the view that Canadians ought to derive the benefits of economic efficiency. A market environment in which efficient market signals are sent is part of this goal. When and where conditions exist which allow for the functioning of a workably competitive market, the Board is inclined to allow the market to operate and to evolve naturally according to its own choices. At the same time, the Board will not hesitate to provide a regulatory solution when a market solution is not available or comes with unacceptable costs.

In striving for economic efficiency, the Board is of the view that the impacts on customers with limited options as well as the impacts on existing infrastructure are relevant considerations. This view is consistent with the Board's mandate which, in practice, includes both the concept of 'protecting' and 'enabling'. Protection suggests that proposals be assessed in light of their impacts on existing systems, customers and market conditions. Enabling suggests that pipelines and other market participants should have the tools to compete effectively and fairly.

Prevention of Abuse of Market Power

The Board must intervene to prevent the abuse of market power. In the Board's view, this implies the prevention of discriminatory pricing, of inappropriate barriers to the efficient functioning of the market, and of favourable treatment of affiliates. An implication of this principle is that the tools provided to pipelines to compete should not provide them the tools to compete unfairly.

Market power must not be allowed to be abused, in terms of both substance, which would need to be proven, and, in terms of appearance and perception. All markets, including efficient ones, have elements of market psychology engrained in their day-to-day operation; however, an apprehension that some market players are abusing their power may lead to inefficient outcomes, and the occurrence of expensive and non-productive transactions and interactions. This kind of situation takes away from economic efficiency and needs to be addressed.

Innovation

A thriving market is one where new ideas are tested, where some succeed and some fail. In that market, innovation occurs and risks are taken. Promotion of innovation encourages dynamic efficiency and contributes to efficient responses to changing supply and demand patterns. In a regulatory context, this means that a proposal may be considered even if there is some uncertainty about its potential consequences.

The Board is of the view that innovation which contributes to economically efficient responses to changing market conditions is to be encouraged. An implication of this principle is that tools provided to pipelines to compete will vary depending on specific market circumstances. Past Board decisions that did not support a specific proposal do not necessarily indicate that given current and expected market conditions, the same decision would be reached today.

Open Access and Transparency

The Board reiterates the oft-repeated principle that shippers are to know in advance of negotiations the terms and conditions of access to a pipeline.[1] This ensures transparency and puts the pipeline and its customers on an equal footing in negotiating a business arrangement.

Another element of transparency relates to the planning for the future of a pipeline system, and to the possibility of cross-talk between a regulated entity and an affiliate operating in a more fully competitive environment. In dealing with this type of issue, the Board is guided by the principle that transparency with respect to the relationship between a regulated entity and its affiliates is important.

The Board is of the view that the revised Code of Conduct, required of the Mainline as a result of the RH-2-2004 – Phase I Decision,[2] could improve the relationship between TransCanada and its shippers because there will be clear rules to govern the interactions between TransCanada and its affiliates.

2.4 Expected Outcomes of these Reasons

In the following chapters, the Board is adjudicating on the specific issues that were presented to it by the parties.

In addition to settling these disputes, the Board envisages that the statement of principles it has established in this chapter, together with the Reasons provided in following chapters, will provide direction and guidance beyond the current circumstances. If this is the case, the market would have an environment where future issues, either related to the ones disposed of in this hearing, or unrelated but capable of being addressed using the same principles, can be resolved without regulatory intervention, or be presented for adjudication on a principled foundation.

The Board is of the view that the complexity of both the market structure and corporate structure in which the Mainline operates has a significant impact on the day-to-day operation of the market, and on the ability of parties to work effectively in addressing and solving issues. Clarity with respect to the principles which should govern in this environment is, in the Board's view, critical to the pursuit of solutions to the challenges an evolving market will face.

---

1 This principle was considered and explained in depth in the GH-2-87 proceeding, among others. On page 92 of the GH-2-87 Reasons for Decision, the Board's views were expressed as follows:

> The Board, however, considers it essential that *all* terms and conditions of access to a pipeline be clearly reflected in the tariff in order to ensure that there are no undue service restrictions imposed by pipeline companies involved in the marketing or producing sectors of the natural gas industry. In the Board's view, prospective shippers are entitled to know the conditions of access to a pipeline system in advance of contract negotiations, as this knowledge will allow market participants to make informed supply and market decisions thereby contributing to the efficient functioning of the natural gas market.

While the context for the GH-2-87 decision was that of "pipeline companies involved in the marketing or producing sectors of the natural gas industry", the merits of open access and explicit disclosure of all terms and conditions apply to all pipelines, irrespective of whether there is an affiliate engaged in energy commodity markets.

2 RH-2-2004 Phase I Reasons for Decision (Chapter 11, Page 39).

Chapter 3

Zonal Toll Structure for Domestic Deliveries

TransCanada Mainline's system is divided into six toll zones for domestic, long-haul services. These domestic toll zones are the Saskatchewan, Manitoba, Western, Northern, Southwest (SWZ) and Eastern Zones. Zone boundaries have been defined based on geographic size as well as political, economic, market and operational factors.

Issue 1 on the Board's List of Issues is "The appropriateness of the existing zonal toll structure for domestic deliveries."

3.1 Position of TransCanada

TransCanada submitted that it continues to believe that zone-based tolls for domestic long-haul services are appropriate. Within each zone, service is substantially similar in nature. Further, TransCanada expressed the view that the existing zonal toll structure continues to support the principles of "fairness and equity" and "no unjust discrimination", identifies and apportions costs fairly through cost-based tolls and results in tolls which are just and reasonable.

TransCanada stated, however, that it also recognizes the need for, and the differences associated with, transportation services to and from a trading point as compared with transportation services to domestic tolls zones. Transportation to and from a trading point merits being tolled using a point-to-point distance methodology.

With respect to NBJ, TransCanada noted that the use of a point-to-point distance methodology would not change the way that tolls are calculated on the Mainline. Both long-haul and short-haul tolls are calculated based on common system average unit costs, which include a fixed energy component that is not distance-related and fixed and variable transmission components that are distance-related. TransCanada stated that the proposed point-to-point NBJ tolls would also be calculated based on common system average unit costs and the current distance methodology, thus ensuring that these tolls respect the integrated nature of its system.

TransCanada stated that this approach (i.e., use of the point-to-point distance methodology) was approved for the SWZ in RH-1-2002 and submitted that the Board should reach the same conclusions with respect to NBJ as it did for the SWZ, namely that the resulting tolls would be both just and reasonable and not unjustly discriminatory.

For these reasons, TransCanada submitted that the existing zonal toll structure for domestic deliveries remains appropriate and that approving NBJ as a receipt and delivery point with point-to-point tolls does not detract from that conclusion.

3.2 Positions of Parties

CAPP submitted that the existing toll design and service principles have stood the test of time and remain sound. CAPP stated that it is concerned with any proposal for change that does not respect the existing principles and that there is no need to alter domestic zones at this time. CAPP argued that the introduction of domestic point-to-point service to and from NBJ changes the zonal structure and becomes a precedent for unraveling the entire zonal system.

IGUA submitted that the existing zonal toll structure for domestic services and the point-to-point long-haul toll structure for export services remain appropriate, provided that what it saw as a toll imbalances between long-haul and short-haul shippers are corrected immediately (see Chapter 4).

EGD stated that the existing zonal structure for long-haul FT service to domestic delivery areas is still appropriate. Similarly, Ontario submitted that the zonal toll structure for domestic deliveries remains appropriate as it appears to apportion costs fairly and results in tolls that are just, reasonable and cost-based.

Quebec submitted that the zone-based toll design for long-haul domestic deliveries should remain at the core of TransCanada's toll methodology.

3.3 Views of the Board

The Board is of the view that the existing zonal toll structure remains appropriate. The views of the Board concerning the consistency of NBJ with the existing zonal structure for domestic deliveries appear in Chapter 5 of these Reasons for Decision.

Decision

The Board approves the continuation of the existing zonal toll structure for domestic long-haul deliveries.

Chapter 4

Short-Haul Toll Design and Contracting Practices

This chapter addresses "The appropriateness of the existing toll design for short-haul services and of TransCanada's short-haul contracting practices", which is Issue 2 on the Board's List of Issues. This chapter also addresses IGUA's request under Issue 6 for a toll design review.

4.1 Toll Design

Short-haul tolls on the Mainline are charged for all hauls which receive gas at locations other than Empress or Saskatchewan receipt points. The existing short-haul toll design uses a point-to-point distance methodology and the system average unit costs. Each distance is calculated as an energy-weighted distance from a particular receipt point to a particular delivery point or to all points within a particular distributor's delivery area using the shortest path. The common system average unit costs are then used to determine the appropriate distance-related and fixed energy cost components for the toll over each short-haul path.

4.1.1 Position of TransCanada

TransCanada stated that the existing toll design for short-haul services continues to be appropriate. In TransCanada's view, the calculation of the shortest distance between receipt and delivery points remains appropriate given the integrated nature of the system and the complex network realities in the Eastern Zone. These network realities make it extremely difficult to determine the distance that short-haul gas actually travels.

TransCanada asserted that the use of the current distance methodology and the common system average unit costs remains fair and equitable as it ensures that shippers transporting gas over the same distance pay the same toll. In TransCanada's view, determining short-haul tolls using the common system average unit costs provides a non-discriminatory treatment of short-haul services that is appropriate given that Firm Transportation (FT) short-haul service has the same tariff rights as FT long-haul service. The use of common system average unit costs ensures that the short-haul tolls respect the integrated nature of the system and are cost-based. TransCanada expressed its view that the result is just and reasonable tolls.

4.1.2 Positions of Parties

IGUA argued that the decrease in long-haul contracts and increase in short-haul contracts over the past six years has changed the Mainline from being primarily a long-haul carrier to a mixed long- and short-haul carrier. In IGUA's view, this change and the costs associated with system underutilization have given rise to a tolling imbalance between long- and short-hauls which must be remedied before opportunities for further segmentation are enhanced through the approval of new receipt and delivery points.

IGUA argued that the existing toll design for short-haul services is deficient because it allows the offloading of zonal cost responsibility and does not fairly allocate to all shippers a reasonable portion of the cost of system underutilization attributable to non-renewals.

IGUA asserted that the inappropriate zonal cost responsibility shift could be corrected immediately by increasing the short-haul tolls to the Central Delivery Area (CDA) and to the Niagara and Chippawa export points by the amounts necessary to equate segmented short-haul service to the existing long-haul tolls to the Eastern Zone and to those export points. IGUA stated that this change could be implemented now by approving a methodology that would charge the higher of the zonal differential or the current short-haul toll.

According to IGUA, allocating the costs of system underutilization on a volume-distance basis is unfair and unreasonable in that it allocates a disproportionate level of such costs to long-distance shippers. IGUA stated that one way of correcting the disproportionate allocation of system underutilization costs is to change the allocation factor applicable to net FT non-renewal revenue losses. In IGUA's view, the application of a volume-only allocation factor to a portion of these costs appears to be a reasonable approach which better allocates the burden of these costs between short-haul and long-haul shippers.

IGUA requested that the Board direct TransCanada to allocate a greater portion of the costs of underutilization to shorter-distance shippers and to bring the matter forward in its application for tolls effective 1 January 2005. IGUA also expressed its hope that the Board would instruct TransCanada to engage in a full toll design review with its stakeholders and to bring forward a report and recommendations in the 2005 toll proceeding. IGUA recommended that the Board direct TransCanada to retain an independent toll design expert to deal with residual matters from this hearing. IGUA observed that many regulators are increasingly appointing independent experts to assist in the resolution of regulatory issues, particularly with respect to issues of affiliate transactions.

In CAPP's view, the existing toll design and service principles remain sound and there is no need to change short-haul service at this time. With respect to IGUA's toll imbalance argument, CAPP submitted that short-haul transportation pays for the distance it travels on the system, which is a simple cost-justified basis for establishing tolls that applies to the system as a whole.

EGD took the position that TransCanada's existing toll design for short-haul services is still appropriate. It stated that all shippers should pay their proportional share according to TransCanada's toll design, where distance plays a predominant role. EGD submitted that cost causation should be matched with cost responsibility and that non-renewing shippers do not cause costs by letting their contracts expire. Therefore, cost responsibility ends when contracts expire. A shipper whose long-haul contract expires, and who then switches to short-haul service, is not responsible for revenue losses.

In response to EGD, IGUA submitted that there is nothing in the evidence of the EGD witnesses or the witnesses of any other party to support the conclusion that volume-distance is the appropriate factor to apply to the costs of underutilization.

Nexen Marketing (Nexen) argued that as a long-haul shipper, it does not feel that there is a current toll imbalance. It expressed the view that the existing toll design continues to be appropriate. Further, Nexen stated that, like long-haul transportation, short-haul transportation pays for the distance from receipt to delivery based on average cost which includes a share of all system costs including the costs of unutilized capacity.

Union stated that directionally it agreed with IGUA's proposal to have an independent party facilitate a review of the current tolling methodology and to ensure that all information was available for all parties. Union submitted that the TTF's knowledge and expertise would make it a suitable forum for such a review.

Ontario argued that IGUA had raised an important issue related to the cost of contract non-renewals and the relative share of the cost that long- and short-haul shippers should bear. While not advocating in this proceeding that a volume-only allocation factor be applied to those costs, Ontario was of the view that the matter should be addressed initially by the TTF.

4.1.3 Response of TransCanada

In response to IGUA's assertions of a toll imbalance, TransCanada stated that its currently approved toll design is a volume-distance toll design and the imbalance that IGUA discussed is the result of the fact that distance is a primary driver for tolls. TransCanada argued that for IGUA's proposal to succeed, it would have to convince the Board that distance should not be a primary driver for tolls, and there is no evidence of this on the record.

With respect to IGUA's request for a toll design review, TransCanada indicated that it is not in favour of using an independent third party expert advisor as suggested by IGUA, and objected to any suggestion that the NBJ proposal should be tied to or contingent upon such a review.

4.2 Contracting Practices

4.2.1 Position of TransCanada

TransCanada stated that it offers short-haul service in response to requests from its customers. It believes such requests are increasing as a direct result of major market changes, which include the development of liquid trading points and an increasing level of long-haul contract non-renewals being replaced, in part, by short-haul contracts.

TransCanada expressed the view that short-haul contracts provide a benefit to the Mainline system. Had TransCanada not offered such a contracting option, bypass and a diminished overall level of contracting on the Mainline may have occurred to the detriment of TransCanada and its shippers. TransCanada stated that retaining and attracting market through short-haul contracts creates the potential to retain and attract more of the limited WCSB supply through the Mainline as long-haul to the eastern market.

TransCanada submitted that it does not offer short-haul service from Dawn or St. Clair in excess of the physical capabilities of the integrated system. With utilization of TransCanada's assets, and the TQM, GLGT and Union transportation arrangements, TransCanada has capacity on the

integrated system to offer firm service from Dawn and St. Clair which exceeds its contracted quantities on the Union system. The use of the integrated system allows TransCanada to fulfill customer requests for service from the Dawn area to market without incurring additional costs. For these reasons, TransCanada submitted that its short-haul contracting practices remain appropriate.

4.2.2 Positions of Parties

IGUA stated that, as long as short-haul shippers are paying a fair share of total system underutilization costs (which, as discussed in Section 4.1, IGUA does not accept), TransCanada should not be precluded from using its entire integrated system to support its short-haul commitments. However, IGUA submitted that TransCanada should not be able to justify a renewal of all of its long-term Transportation By Others (TBO) commitments on GLGT to support short-haul commitments, nor should TransCanada automatically be obliged to contract for TBO expansion capacity on the pipeline systems of Union and TQM in response to incremental demands for short-haul.

Union argued that, over the past two years, TransCanada has discriminated against those parties seeking access to the Dawn receipt point in a manner inconsistent with historic short-haul contracting practices and inconsistent with TransCanada's Mainline tariff. Union submitted that TransCanada imposed discriminatory language in its service contracts from Dawn, and only from Dawn, which communicated to the market a serious restriction on the long-term availability of Dawn receipt service on the Mainline. Union also submitted that certain contracting actions taken by TransCanada imposed restrictions on renewal rights that were discriminatory and contrary to the Mainline tariff. Union further alleged that TransCanada, through a February 2004 open season, acted to restrict access at Dawn because of its pre-commitment of the related contract rights along the Union path to its affiliate, TransCanada Energy Ltd., for the Bécancour project. Union stated that, to ensure transparency with respect to the discriminatory contracting practice at Dawn, the Board should require TransCanada to make full disclosure of all unique conditions, timing, and the nature of curative action for Board approval.

Union stated that it is concerned that the means by which TransCanada now provides short-haul service across the NOL gives rise to additional costs not covered by the short-haul toll. According to Union, a review of these matters should be undertaken by the TTF without delay, particularly in light of the pending expiry of the GLGT TBO contract on 31 October 2005. In addition, Union submitted that the Board should direct TransCanada to make full disclosure of all costs, existing and future, associated with the provision of short-haul service across the NOL, including an identification of all GLGT costs on a go-forward basis.

With respect to the renewal of TBO capacity on GLGT, Union stated that it is inadequate to attempt to deal with decisions to renew TBO capacity on GLGT after renewal has been done. Union further submitted that the Board should direct TransCanada to ensure maximum flexibility to shed GLGT costs should a TTF review or a Board decision prove unfavourable to TransCanada's current operating arrangement. Specifically, Union argued that TransCanada should be directed to contract for the shortest possible renewal term until the analysis can be completed. In addition, Union stated that, at a minimum, TransCanada should not be permitted

to offer any additional short-haul by means of the NOL route unless and until a TTF review is conducted.

EGD took the position that TransCanada's existing contracting practices for short-haul services are still appropriate.

CAPP stated that the proposed Union restriction on offering short-haul by the Mainline appears to make no sense other than to protect Union's interest in the Dawn-Trafalgar contracts it has with TransCanada.

Ontario noted that other intervenors have raised issues related to TransCanada's short-haul contracting practices and observed that improvements can and should be made in those contracting practices.

4.2.3 Response of TransCanada

In response to Union's allegations of discriminatory contracting practices, TransCanada submitted that it has done nothing that breaches its Mainline tariff. TransCanada stated that it can only contract for system capacity as it is defined in its Mainline tariff. The language concerning the possible change in 2008 to the receipt points in the Dawn contracts was required due to the onerous renewal provisions for TBO capacity on the Union system.

Concerning Union's allegations of affiliate preference, TransCanada confirmed that it awarded capacity to its affiliate, TransCanada Energy Ltd., because it was the only bidder who submitted a bid for the new capacity posted in the December 2003 open season. TransCanada stated that no one else has been prepared to underpin facilities with the appropriate contractual commitments.

TransCanada argued that the GLGT TBO issue is irrelevant to what the Board has to decide in this case. TransCanada pointed to the RH-1-2002 Decision wherein the Board stated that the GLGT contract renewal issue will be dealt with around the time that the contract renewal will take effect because the actual terms and conditions of the renewal, including the final volume, price and term, will only be known at that time.

4.3 Views of the Board

The Board recognizes that, in recent years, there have been significant changes in customer contracting behaviours in favour of short-haul capacity on the eastern segments of the Mainline. The market desire for short-haul capacity has resulted in substantial non-renewals of long-haul capacity as shippers let their long-haul contracts expire to recontract for short-haul capacity. The result of these activities has been a diminishing customer base for long-haul transportation and upward pressure on long-haul zonal tolls.

While the Board recognizes the impact on long-haul tolls caused by the switch to short-haul services, and the concerns raised by IGUA, the Board

finds that the evidence adduced in this proceeding was insufficient to show that specific changes to TransCanada's short-haul toll design are necessary at this time. The Board agrees with those parties who submitted that all shippers, both long-haul and short-haul, pay their proportional share of the approved cost of service under TransCanada's existing toll design, in which distance plays a predominant role.

The Board continues to accept the existing toll design for short-haul services, including the use of the shortest path between receipt and delivery point. However, the Board will continue to monitor the appropriateness of the existing toll design methodology, especially if greater movement towards short-haul causes portions of the system historically used for long-haul to be further underutilized.

With respect to TransCanada's short-haul contracting practices, the Board finds it appropriate for TransCanada to use its entire integrated system to provide services, including short-haul. Furthermore, it is entirely appropriate for TransCanada to make every effort to maximize the use of its existing facilities and TBO arrangements to provide services desired by the market.

When those TBO arrangements come up for renewal, as is the case with TransCanada's principal contract for GLGT capacity on 31 October 2005, the prudence of TransCanada's decision to renew and the term and conditions of any renewal will be assessed when the final volume, price and terms are known with certainty. This is consistent with the Board's decision in RH-1-2002 wherein the Board also provided guidance to TransCanada and parties on the GLGT contract renewal issue.

In light of the above, the Board views as unnecessary Union's request to direct TransCanada to make full disclosure of all costs, existing and future, associated with the provision of short-haul service across the NOL, including an identification of all GLGT costs on a go-forward basis.

With respect to Union's submissions that TransCanada discriminated against parties seeking access to Dawn by placing contractual limitations on the long-term availability of Dawn as a receipt point in its transportation contracts and in its open season documentation, the Board accepts TransCanada's explanation as to why the contract limitations were put in place and is not persuaded that TransCanada acted in contravention of the Mainline tariff. For a further discussion of this issue, please see Chapter 5 of these Reasons for Decision.

Decision

The Board approves the continuation of the Mainline's existing toll design for short-haul services and finds TransCanada's short-haul contracting practices to be appropriate at this time.

Chapter 5

North Bay Junction, Parkway and St-Nicolas

5.1 Overview

Issue 3 on the Board's List of Issues is "The appropriateness of the North Bay Junction Proposal and any alternate proposal". This chapter discusses the NBJ proposal as well as the two proposed receipt and delivery points advanced by the Eastern Utilities, namely Parkway and St-Nicolas. NBJ, Parkway, and St-Nicolas are shown in Figure 5-1.

This chapter also addresses Issue 5 of the Board's List of Issues, namely "The potential impact of any changes to toll design on tollpayers and other services". Prior to addressing specific proposals, this chapter presents an overview of the evolving market context to provide the contextual backdrop for the Board's consideration of these proposals.

5.2 The Evolving Market Context

Following the construction of the Alliance and Vector pipelines, Dawn has emerged as a significant downstream market area source for natural gas supply. Between 1998 and 2001, the volume of gas traded at Dawn has increased by more than 300 percent.[3]

For consumers in eastern Canada, the Dawn market centre provides an alternative to purchasing WCSB supply in Alberta and to obtaining long-haul transportation to eastern Canada. For many consumers, particularly those located in the Union and Enbridge CDAs, it is now possible to purchase natural gas from western Canada or from other supply sources without the use of long-haul capacity on the Mainline. While consumers located in eastern Ontario and Quebec can still purchase gas supply at Dawn, these consumers do not currently have any alternative to using the Mainline to transport gas supply to their end-use markets, although their absolute reliance on the Mainline is now limited to short-haul transportation.

Excess capacity on the Mainline and the development of a liquid trading point at Dawn has resulted in an increasing desire for short-haul transportation services from Dawn to end-use markets. This is consistent with the recent trend to utilize short-haul transportation services to source natural gas supplies from the nearest liquid trading point. This trend is illustrated in Figure 5-2. However, the total amount of supply available at Dawn may, under certain situations, exceed available takeaway capacity.

The increased demand for access to Dawn has resulted in a number of open seasons to solicit support for the construction of additional pipeline facilities. At the time of the hearing, Duke Energy Gas Transmission initiated an open season that was scheduled to close on 30 September 2004 to expand Union's storage at Dawn and transmission capacity between Dawn and Parkway. Similarly, Vector Pipeline initiated an open season that was scheduled to close on the same date.

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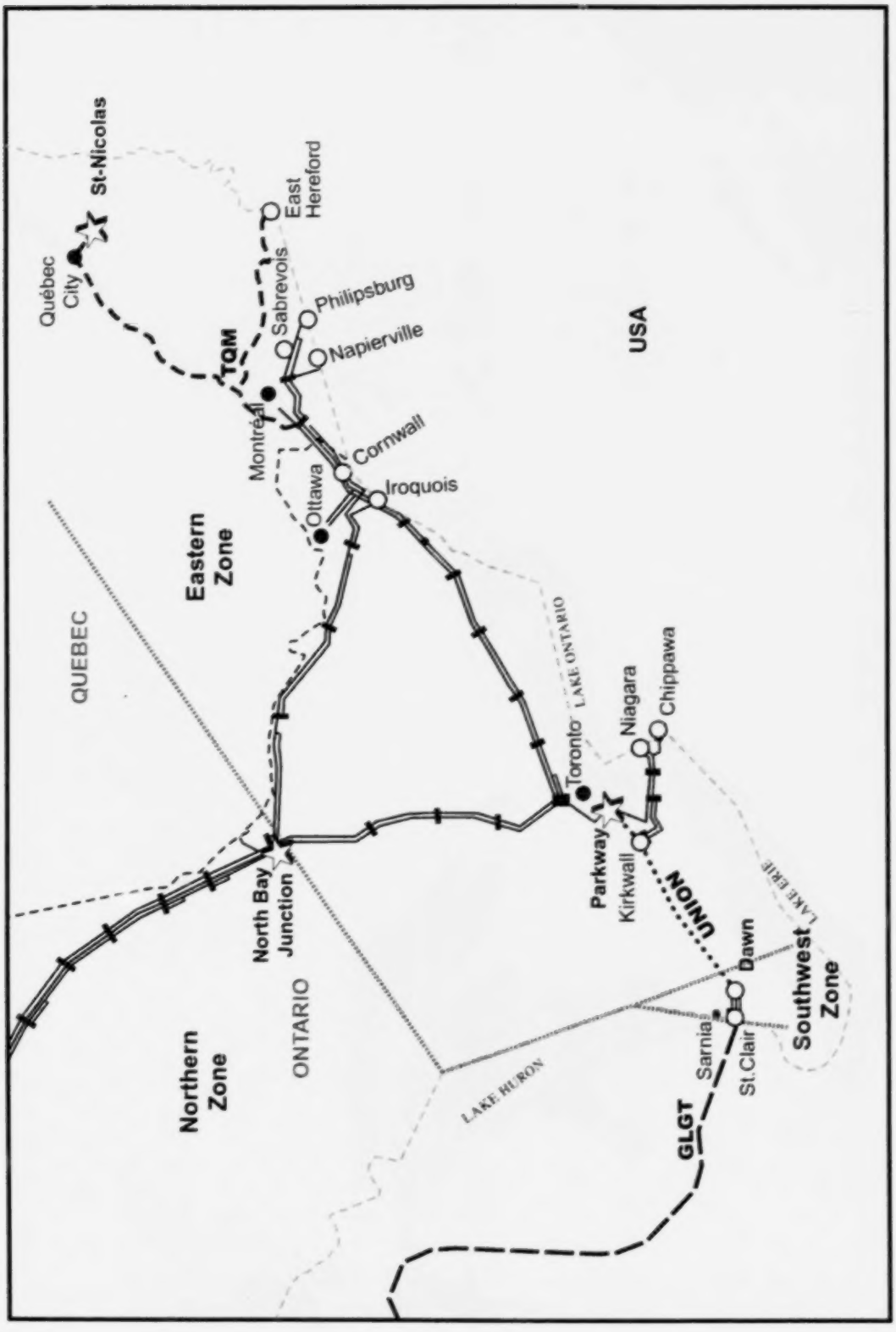
[3] RH-1-2002 Reasons for Decision (Chapter 8, Page 60).

Figure 5-1
Proposed Receipt and Delivery Points



Both open seasons were advertised as a means to reduce the costs associated with long-haul transportation commitments to reach markets in eastern Canada and the U.S. Northeast.

The Mainline has evolved from a highly utilized provider of long-haul transportation to a hybrid system where long-haul and short-haul transportation services co-exist on an integrated system. This evolution has occurred in a landscape that ranges from areas where TransCanada has an effective monopoly to regions where TransCanada must compete in a workably competitive market.

5.3 North Bay Junction

The background leading to the NBJ application is discussed in Section 1.1 of these Reasons for Decision. In its application, TransCanada sought approval to establish NBJ as a new receipt and delivery point. TransCanada also requested that North Bay be removed from the NDA and that tolls be established for service to and from NBJ. During the proceeding, TransCanada also requested approval of additional facilitating amendments to Section III of the Mainline Tariff's General Terms and Conditions. NBJ is a physical point on the Mainline located at North Bay Compressor Station 116, in Ontario (see Figure 5-1).

5.3.1 Position of TransCanada

Addition of Receipt Point

TransCanada proposed NBJ as a means to respond to an increase in the demand for short-haul transportation services and to provide an alternative to Dawn for contracting and tolling purposes.

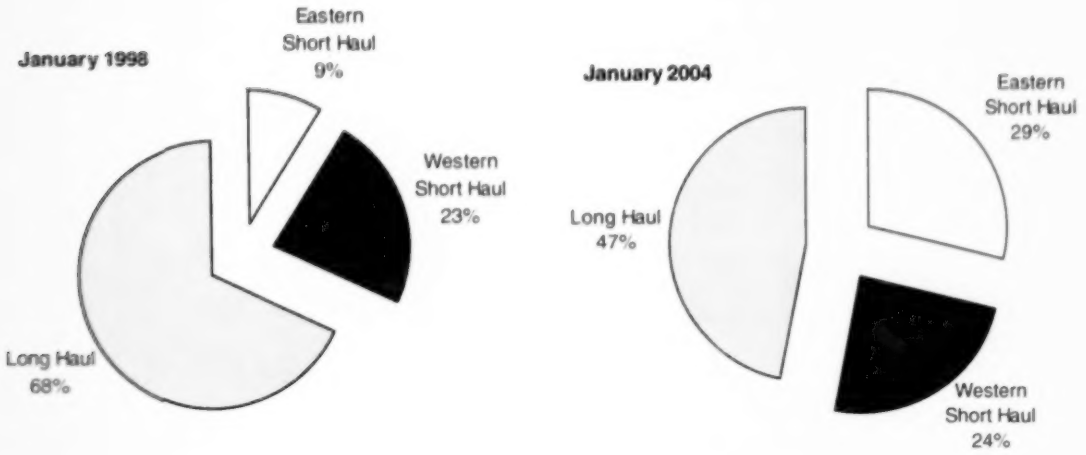
TransCanada submitted that changes in customer contracting and pipeline utilization have demonstrated an increasing market desire for short-haul capacity on the eastern segments of the Mainline. According to TransCanada, transportation customers want to reduce exposure to demand charges by contracting for short-haul capacity from trading points. TransCanada noted that a significant portion of its domestic market has migrated from long-haul service on the Mainline to a combination of long-haul service on Alliance and Vector and short-haul service on the Mainline from Dawn to end-use markets. This has resulted in a reduction in the utilization of long-haul transportation on the Mainline, both on the NOL and on the GLGT system, and an increase in the demand for short-haul transportation from Dawn to eastern markets. TransCanada further noted that eastern short-haul volumes have increased from 9 percent of total Mainline transportation volumes in January 1998 to 29 percent in January 2004 (see Figure 5-2).

TransCanada submitted that reduced utilization of upstream long-haul capacity has resulted in higher tolls for its remaining shippers. TransCanada suggested that additional facilities from Dawn to Parkway would be required if existing markets were allowed to continue to migrate to Dawn. This would further offload the upstream capacity on the Mainline and result in yet higher tolls for remaining shippers.

In April 2003, TransCanada received notice from its customers that approximately 822 TJ/day of firm capacity would not be renewed. Approximately 80 percent of this capacity was for

long-haul service. TransCanada claimed that the market had not eroded significantly and suggested that customers have requested short-haul service from Dawn to replace long-haul transportation. TransCanada noted that its 18 September 2003 open season resulted in all remaining short-haul firm capacity from Dawn being fully contracted and that the total bids exceeded its ability to provide short-haul service from Dawn. TransCanada submitted that, in open seasons conducted between September 2003 and January 2004, total eastern short-haul bids were 2.7 times greater than the capacity it was able to award.

Figure 5-2
Comparison of Long-Haul Versus Short-Haul
Total Transportation Quantities
January 1998 versus January 2004



TransCanada indicated that it has the ability to use its integrated system to offer firm service from Dawn allowing TransCanada to exceed its contracted capacity on the Union system. Specifically, TransCanada has been able to increase the amount of firm short-haul service it provides from Dawn by shifting long-haul volumes that would typically flow via TBO capacity on GLGT to Dawn and on Union to Parkway to the NOL. TransCanada's ability to offer short-haul transportation service from Dawn is a function of the combination of its physical capacity, its contracted capacity with Union, and its firm contracts with its customers. TransCanada noted that it has reached the limits of its ability to offer firm short-haul service from Dawn.

Since existing short-haul capacity from Dawn has been fully contracted, TransCanada indicated that the establishment of NBJ as a receipt and delivery point would provide the opportunity to utilize existing capacity on the Mainline to meet the demand for short-haul transportation that currently cannot be physically provided from Dawn. In its view, this would reduce the potential for bypass and the need to construct additional facilities. TransCanada also provided evidence indicating that the capital costs of incremental facilities from Dawn would be greater than the costs required to serve markets in the U.S. Northeast and Eastern Canada with supply from NBJ.

TransCanada selected the NBJ location for two reasons. First, as of March 2004, TransCanada had approximately 400 TJ/d of unutilized capacity to NBJ and from NBJ to the CDA. Second, since the distance from Empress to NBJ is approximately the same as the distance from Empress to Dawn, TransCanada noted that tolls to each point would be similar, and therefore shippers should be indifferent, on a toll basis, to using service from Empress to either NBJ or Dawn.

TransCanada anticipated a significant increase in gas demand in the U.S. Northeast and Eastern Canada that could utilize NBJ. TransCanada noted that, while the Iroquois Gas Transmission System, L.P. has signed firm contracts with its customers for its Eastchester Expansion Project and has added capacity on its system to receive additional supplies from the Mainline at Waddington, no additional transportation contracts have been signed with TransCanada to date. TransCanada suggested that these customers would prefer to obtain short-haul supply from Dawn rather than long-haul from Empress. Establishing NBJ as a receipt and delivery point would improve TransCanada's ability to compete for these volumes.

TransCanada indicated that it has not, to date, received any formal requests for service to or from NBJ and that it does not expect to receive any requests for service until NBJ is approved as a receipt and delivery point. However, TransCanada noted that it received a number of letters of comment expressing an interest in NBJ. TransCanada expected that market interest in NBJ would develop in a manner similar to the SWZ, which was initially met with resistance from stakeholders. TransCanada noted that all available capacity into the SWZ has recently been fully contracted on a short-term basis.

Toll Design

TransCanada submitted that it would use the existing approved tolling methodology to determine tolls for services at NBJ. Therefore, the proposed tolls for NBJ would not change the existing toll design for the Mainline.

Tolls for long-haul deliveries to NBJ would be determined by the current long-haul toll design methodology using system average unit costs. Under this methodology, the toll would be based on the measured distance from Empress to NBJ and the relevant distance credits would be applied to determine an adjusted load centre.

Tolls for short-haul services would be determined by using the current short-haul toll design methodology and would incorporate system average unit costs. TransCanada would measure the distance from receipt point to delivery area or export point using the shortest path.

Tolling Impacts

TransCanada submitted that, to the extent that NBJ attracts incremental long-haul and short-haul transportation demand, all Mainline shippers would benefit from the increase in system utilization. As an example, TransCanada noted that if Eastchester Expansion shippers contracted for volumes corresponding to the expansion project (243 TJ/d) from Empress to NBJ and for short-haul service to the Iroquois export point, the Eastern Zone toll would be reduced by approximately $0.06 per GJ. However, if there was no shipper interest in NBJ, then there would be no impact on tolls elsewhere on the Mainline.

TransCanada provided a comparison of tolls between segmented transportation service at NBJ and the current long-haul tolls to the Eastern Zone. Tolls to the Union North Central Delivery Area (NCDA) and the Union and Enbridge CDAs would be reduced by segmenting transportation service at NBJ. Tolls to the Enbridge, Union, Gaz Métro and the Kingston Public Utilities Commission Eastern Delivery Areas (EDA) would be higher for segmented service, as would tolls to export points located adjacent to the Eastern Zone. Assuming all customers with a 2003/2004 expiry date in delivery areas within the Eastern Zone that would benefit from contract segmentation chose to segment, TransCanada estimated that the impact on the Northern and Eastern Zone tolls would be $0.000/GJ and $0.008/GJ, respectively. TransCanada estimated that, based on the expiry profile for firm transportation contracts to the end of 2008/2009, the cumulative impact on the Eastern Zone toll would be $0.026/GJ.

5.3.2 Positions of Parties

Eastern Utilities

EGD, Gaz Métro and Union (collectively the Eastern Utilities) opposed the NBJ application.

The Eastern Utilities submitted that TransCanada's NBJ proposal was too narrow in that it did not respond to what the market requires and therefore was not beneficial to the eastern market. They expressed the view that the market requires unfettered access to supply from any source and that the market should be able to find the most appropriate and competitive sources of supply in order to meet its requirements. They submitted that TransCanada's proposal would not address or provide an opportunity for the market to freely choose the locations preferred for the development of trading.

According to the Eastern Utilities, TransCanada's NBJ proposal would not enhance the eastern market's ability to access supply. The Eastern Utilities noted that supply diversity and sufficiency is critical, particularly to local distribution companies (LDCs) which have an obligation to serve. With the WCSB showing signs of maturing, the Eastern Utilities submitted that it is very important that the eastern market maintains strong and direct connectivity with alternative supply locations such as Dawn, Michigan and Chicago, as well as alternative sources of supply such as liquefied natural gas (LNG). This was particularly important in light of potential market growth in Ontario and Quebec.

The Eastern Utilities submitted that the market wants more short-haul service from Dawn and argued that TransCanada intends to pursue its proposal for NBJ in preference to offering more service from Dawn. They claimed that TransCanada should provide the service that the market wants. They noted that while the Mainline may continue to be underutilized, this was a simple result of pipe-on-pipe competition and, in a competitive world, not necessarily bad for the marketplace.

The Eastern Utilities submitted that NBJ is anti-competitive because it blocks or constrains access to Dawn and Parkway. They submitted that the term "block" implies an economic block, such as making a heavy investment in sunk costs so as to argue before a regulator that it would be an inefficient use of resources to approve a competitor's facilities expansion. Union made note of TransCanada's many references to unnecessary bypass and redundant facilities, and

argued that TransCanada regards bypass as anything that would encourage parties to consider expansions or direct connections to the Union system.

The Eastern Utilities acknowledged that the NBJ proposal does not, in and of itself, preclude additional pipeline capacity into and away from Dawn. Rather, it was TransCanada's reluctance to provide additional capacity away from Dawn, coupled with the NBJ proposal, that would preclude additional capacity from being created. They submitted that NBJ would not achieve the objective of avoiding redundant facilities and unnecessary bypass unless access was constrained to other sources of supply which do not utilize the TransCanada Mainline.

According to the Eastern Utilities, TransCanada's proposal would impede the development of infrastructure in the eastern market that is required to improve the accessibility and diversity of supply for growing markets east of Parkway. They suggested that the NBJ proposal would limit the options available to the eastern markets to Empress supply via NBJ and the TransCanada Mainline. Eastern Canadian markets would, therefore, become more dependent on natural gas from the WCSB at a time when natural gas supply from the WCSB is projected to be in decline. The Eastern Utilities suggested that, since it was TransCanada's intention to limit or block access to other supplies via Chicago and Dawn, the Board should ensure that open and unfettered access from Dawn to Parkway and points east would be available. They concluded that the development of other receipt and delivery points instead of, or in addition to, the NBJ receipt and delivery point would minimize the potential for constraining Eastern Canadian natural gas markets.

The Eastern Utilities indicated that TransCanada's proposal would create, by regulatory action, a Mainline framework that the market itself would not create if the market was left to its own devices. The Eastern Utilities claimed that NBJ by itself is not a natural market centre and does not possess the attributes required for a market hub. The lack of physical storage capacity, interconnections with other pipelines and multiple sources of supply would limit the options available to market participants at NBJ. They noted that, while markets have developed at locations that are not natural market centres, these markets typically develop in order to address regulatory constraints or political boundaries. In their view, NBJ would not be a free market solution, and if it developed as a significant transaction point, it would do so primarily because of regulatory structures. Therefore, if NBJ were to be approved, they submitted that the Board should approve as many receipt/delivery points as possible so that the market could determine which points are the most suitable for trading.

The Eastern Utilities suggested that, if increased demand in Alberta leads to increased prices at AECO, and if NBJ is approved to the exclusion of other receipt points on the TransCanada system, gas costs to eastern consumers could increase. In their view, the higher prices at AECO, relative to Dawn, would increase market prices in the East if TransCanada is allowed to block access to Dawn or to prevent or delay the entry of LNG at the eastern end of its system.

The Eastern Utilities submitted that the details of NBJ have not been fully worked out. They suggested that NBJ would introduce a lot of change and segmented service on a system that has operated on a zonal system for domestic deliveries for a very long time. The Eastern Utilities noted the concerns expressed by Ontario about the recovery of fuel costs under segmented service. They argued that the implications of segmentation in terms of future expansions need to be resolved prior to instituting the new service. The Eastern Utilities expressed the view that

TransCanada's proposal for NBJ was no more advanced than the proposal for Parkway. In their view, both proposals required additional work before implementation.

In addition to the joint position of the Eastern Utilities, each of EGD, Gaz Métro and Union provided further submissions on NBJ.

EGD submitted that TransCanada should be able to design services to encourage the overall utilization of the Mainline system. However, EGD claimed that NBJ would have the collateral effect of denying the expansion of a service that the market wants TransCanada to provide (i.e., the provision of more short-haul service from Dawn to points beyond Parkway).

EGD indicated that, as long as the NOL had capacity, TransCanada's position was that there should be limitations or restrictions on approving new facilities. While it is the Board's responsibility to ensure a balance between existing system utilization and new facilities, EGD noted that TransCanada would likely request that the Board impose those restrictions. EGD suggested that TransCanada's definition of bypass goes well beyond underutilized facilities and extends to any load that is, or could be, through an expansion, served by TransCanada.

Gaz Métro opposed TransCanada's proposal to designate NBJ as a receipt and delivery point for a number of reasons. Gaz Métro noted that NBJ would be the only domestic point for which a point-to-point tolling methodology would apply and therefore was a breach of existing tolling principles.

Gaz Métro noted that, while TransCanada has a duty to protect the long-term viability of its system, it also has a duty to protect the interests of its shippers, particularly those who are captive to the Mainline. Gaz Métro noted that it is captive to TransCanada's integrated system and that it is particularly vulnerable to increases in the delivered cost of gas since its customers are mainly industrial users. Gaz Métro indicated that it would not have an interest in segmenting volumes shipped to its franchise via NBJ because that would, on an annual basis, result in an additional $16 million in transmission costs. Gaz Métro argued that TransCanada's proposal would result in captive customers in the Eastern Zone bearing the costs of discounts to other users. Gaz Métro did not believe that it was reasonable to expect captive users in the Eastern Zone to pay the costs of a proposal that has not been demonstrated to be advantageous for all users.

Gaz Métro noted that TransCanada is not at risk for the negative consequences of changes to its tolling. Since Gaz Métro's contracted volumes represent a steadily increasing percentage of all volumes shipped from Empress to the Eastern Zone, Gaz Métro argued that it is responsible for paying a steadily increasing percentage of the cost of TransCanada's tolling proposals.

Union submitted that, over the past two years, TransCanada has discriminated against parties seeking access to Dawn. Union indicated that TransCanada placed contractual limitations on the long-term availability of Dawn as a receipt point in both its transportation contracts and its open season documentation. For existing capacity, these provisions reserved the right for TransCanada to change the Dawn receipt point should the contract remain in place beyond 1 November 2008. Union argued that TransCanada had been communicating to the market a

serious restriction on the long-term availability of Dawn receipt service on its system, thereby damaging the market's perception of the continued availability of short-haul service from Dawn.

Union suggested that there was an inappropriate lack of separation between TransCanada's regulated and unregulated business strategies, as evidenced by the fact that two senior employees of the Mainline had seen a report entitled "*Building Alignment on the Northeastern Gas and Power Growth Strategy*" (Consultant's Report). The Consultant's Report was commissioned by TransCanada Corporation and contains matters related to both regulated and unregulated activities. Union further asserted that TransCanada's failure to meaningfully discuss the NBJ application at the TTF was symptomatic of its intention to align regulated and unregulated activities within its broader corporate interests. Finally, Union submitted that because NBJ featured prominently in TransCanada's effort to align Mainline practices with unregulated business objectives, NBJ should be denied.

Union asserted that TransCanada's delay in holding an open season to respond to a request from Alberta Northeast Gas Limited (ANE) for information on the provision of short-haul service from Dawn was an example of TransCanada's efforts to block or constrain the Dawn receipt point.

Union suggested that TransCanada was determined not to facilitate an expansion of capacity from Dawn unless absolutely required. Union argued that protracted regulatory proceedings before the provincial regulator and the Board could be required before additional capacity between Dawn and Parkway would be approved. Union concluded that this delay would preclude access to Dawn.

Union questioned the need for TransCanada to improve its ability to compete. In Union's view, TransCanada was trying to create a framework that provides the protection afforded by cost of service regulation, yet allows TransCanada to compete by limiting service options to only those that are self-serving. Union acknowledged that the Alliance and Vector pipelines have had an operational impact on TransCanada, as the Mainline has lost long-haul FT contracts. However, Union argued that TransCanada has not been harmed by market change in that TransCanada does not bear the risk of contract non-renewal, and the Board has effectively protected TransCanada by allowing it to recover its full costs.

CAPP

CAPP stated that it was not opposed to the NBJ proposal *per se*, but felt that the proposal leads to a large number of complex and important issues. CAPP submitted that TransCanada should make attempts to maximize the use of its regulated transportation system, and that it generally makes more sense to utilize existing capacity rather than incurring the costs of additional facilities. While the market is generally able to resolve this issue, CAPP noted that regulatory vigilance is required to ensure that the business interests of regulated and non-regulated affiliates do not unduly influence the decision-making process. CAPP suggested that these relationships could result in anti-competitive and collusive conduct and could distort the fair distribution of the costs and benefits of TransCanada's services to its current stakeholders.

CAPP was of the view that the Eastern Utilities were suggesting that the NEB should change the regulatory compact with TransCanada, which currently does not require the Mainline to institute changes in services to explicitly encourage its competitors. CAPP further noted that Union and EGD are owned by companies that have ownership of other energy assets, which places them in direct competition with TransCanada's long-haul transportation service.

CAPP questioned whether the decision to cease the development of a new comprehensive business and regulatory model, and to instead pursue strategies for additional competitiveness through improvements to the existing toll design, was a decision by the management of the Mainline or by TransCanada Corporation. CAPP noted the Consultant's Report was used by TransCanada as an input into its decision not to pursue a new comprehensive business and regulatory model. While TransCanada explained that the Consultant's Report was commissioned as part of a broad corporate planning and strategy initiative for TransCanada Corporation, CAPP highlighted that the Consultant's Report contained references to NBJ. Therefore, CAPP questioned whether NBJ aligns with the overall business strategy of TransCanada Corporation. CAPP also noted that the Consultant's Report was provided to TransCanada with specific legal advice pertaining to NBJ and questioned whether the Consultant's Report was used solely in relation to the legal advice provided or whether the report was used for other purposes. CAPP also questioned whether there was a connection between the Consultant's Report and the revised application that was filed for NBJ and noted that both the Consultant's Report and the revised application were dated 31 March 2004.

CAPP suggested that TransCanada has long-term toll and tariff initiatives that relate to NBJ and are linked to the development of an eastern market hub. With the NBJ application following so closely behind the SWZ application, CAPP suggested that the NBJ proposal was part of an objective outlined in TransCanada's Transportation Services White Paper[4] to develop an eastern market centre.

CAPP explained that during the RH-1-2002 proceeding, TransCanada knew that facilitating increased demand for access to Dawn would lead to a capacity bottleneck and the need for new facilities. CAPP submitted that TransCanada was of the belief that the creation of an eastern market centre would help alleviate the need for redundant facilities. CAPP further submitted that one option considered by TransCanada, as a means to facilitate an eastern market centre, would be to create a market hub at or near North Bay, with mechanisms to facilitate exchanges between Dawn and NBJ. CAPP asserted that the NBJ proposal is incomplete because it does not include an ability to transact between Dawn and NBJ. In CAPP's view, in the absence of such an exchange mechanism, NBJ would not be a good substitute for Dawn.

From CAPP's perspective, a critical question is whether TransCanada should be allowed to proceed with its objective of developing an eastern market centre by rolling out small pieces one at a time, or whether TransCanada should be required to put the entire goal on the table so that it

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[4] In January 2002, TransCanada released to its stakeholders the Transportation Services White Paper, which was its proposal for a new, comprehensive business and regulatory model to address rates and services for all three of its wholly owned Canadian transportation systems. The objectives of the White Paper were to enhance TransCanada's competitiveness and to increase the flexibility and range of options and services available to its customers. One of the key concepts of the White Paper was the segmentation of the TransCanada system into three distinct areas: supply, transmission and market. TransCanada envisioned that a market hub, similar to the NOVA Inventory Transfer (NIT) in Alberta, could be created in Eastern Canada.

can be considered in an orderly manner. CAPP was concerned that NBJ would alter the structure of the market, including how upstream long-haul capacity would be held and the associated cost responsibilities. CAPP indicated that, as a result of the piecemeal approach taken by TransCanada, a sound evaluation of the need for and nature of change, along with a fully developed consideration of all implications, had not occurred, therefore NBJ should be denied.

CAPP submitted that NBJ changes the toll design and is a violation of the principles of zonal tolling. CAPP indicated that NBJ introduces a domestic point-to-point service into a zonal structure. There are shippers in the Eastern Zone who could obtain lower tolls and leave the zonal service by taking service to and from NBJ. Shippers in the Eastern Zone who do not have that economic advantage would have to bear added costs to cover the costs avoided by others. In CAPP's view this was a violation of the concept of a zonal toll system and a precedent for unraveling the entire zonal structure.

With respect to the CA's proposal for conversion rights, CAPP suggested that, if the Board were to approve NBJ, there is a question of fairness for those that are not contractually able to segment relative to those whose contracts provide the opportunity. CAPP submitted that existing contracts should be respected. In its view, the reasons for reopening contracts should be compelling and any alternatives to reopening contracts should be explored.

CAPP recommended that the NBJ application be denied without prejudice until further information is made available, including the SWZ study requested by the Board in RH-1-2002. If the Board decides to approve NBJ, CAPP suggested that the approval should be granted on a pilot basis, in conjunction with a requirement for TransCanada to conduct an open season for capacity to and from both Dawn and NBJ. In CAPP's view, this would balance the objectives and desires of intervenors who view Dawn as the market reality with TransCanada's desire to advance its proposal for NBJ.

IGUA

IGUA argued that the NBJ proceeding was not simply about choice and opportunity. Rather, in its view, the proceeding was about the toll structure, toll design and contracting practices resulting from the transition that has occurred to the Mainline's carrier status from being primarily a long-haul carrier to a mixed long- and short-haul carrier. Therefore, the NBJ proposal should not be viewed as an isolated opportunity for TransCanada to attempt to preserve or enhance its competitiveness by simply adding one receipt and delivery point to the Mainline.

In IGUA's view, the approval of any new receipt and delivery point would prompt further non-renewals of long-haul firm service and would lead to additional segmentation and short-haul services. IGUA submitted that the costs associated with system underutilization and the emergence of more short-haul service has given rise to a tolling imbalance between long- and short-haul service that must be remedied before the opportunities for further segmentation are enhanced through the approval of new receipt and delivery points (see Chapter 4 of these Reasons for Decision).

IGUA suggested that NBJ is only one piece of the many toll design enhancements that TransCanada is contemplating.[5] Therefore, from a toll design perspective, the proposal for NBJ is a piecemeal proposal.

IGUA submitted that the Board should establish the appropriate decision-making criteria for determining proposals by TransCanada and others to add new receipt and delivery points on the Mainline. IGUA noted that NBJ is not a point where gas can either be accepted into or delivered off the Mainline, and in that context, may not meet the definition of what should constitute a receipt and a delivery point. In the absence of criteria, if the Board were to approve new receipt and delivery points for the Mainline, then approval, in IGUA's submission, should not become effective before the toll imbalance problems it perceives have been remedied and all operating aspects with respect to the new receipt and delivery points have been resolved.

IGUA concluded that the NBJ proposal is not a matter of urgency since most of the capacity on the NOL has been sold in the near term.

Cogenerator's Alliance (CA)

In CA's view, the NBJ application is simply a tolls matter and is, for that reason, relatively straightforward. CA argued that the NEB Act establishes the statutory requirements and therefore the NBJ proposal should be examined to determine whether the resultant tolls would be unjust, unreasonable or unjustly discriminatory.

In CA's view, the objectives behind TransCanada's application, the piecemeal approach to implementing toll design and service changes on the Mainline, as well as questions pertaining to whether the NBJ proposal might work were not relevant considerations. CA argued that the Board must consider the toll implications that would arise if there were significant shipper contracting to and from NBJ, and the toll implications if the market did not contract to or from NBJ.

CA submitted that its chief concern with the NBJ proposal was the potential for toll discrimination. It argued that, if TransCanada's proposal were approved, it would result in parallel, inconsistent and competing toll designs on the Mainline system. The CA claimed that two groups of shippers with identical requirements at identical receipt and delivery points could pay different tolls depending on whether they used conventional long-haul service to the Eastern zone or segmented service through Dawn. This would result in discrimination because shippers that hold long-term contracts would not be able to use the segmented service until their existing contracts expire. Without a right to convert from zonal to segmented service, or from segmented to zonal service, CA indicated that shippers who hold long-term contracts on the Mainline could be at a significant and unjustified toll disadvantage to short-term shippers who are able to effectively convert between the two types of service because their contracts expire. Therefore, the CA concluded that there is clearly a potential for undue discrimination among different classes or groups of shippers.

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5 TransCanada indicated that it is considering the following enhancements to its toll design and tariff structure for implementation within the next five years: North Bay/Dawn Exchange Service; Bi-Directional Firm Service; Operational Segmentation; Storage and Transportation Service; Winter Firm Service; Short Notice Service; Seasonal Firm Service; Fixed Price Firm Service; Levelized Fuel Service; and Variable Firm Service.

The CA noted that its members are long-term shippers and if there is a new toll design option being made available to new shippers or renewing short-term shippers, CA's members would likely not be able to take advantage of the new toll option for a long time. In its view, this would be unfair to the CA members who supported the TransCanada system through long-term contracts.

The CA refuted TransCanada's claim that different tolls are justified because the two shippers are somehow different, or receive different services or transport gas under different terms and conditions. The CA submitted that, in order for a toll difference to be just, there should be some logical connection between the difference in services provided and the resultant toll design difference. In CA's view, there was no difference between conventional and segmented service that justifies different toll designs.

The CA argued that the issue of discrimination could be mitigated by requiring TransCanada to provide all shippers with an ongoing right to convert their service between conventional and segmented service through NBJ. In its view, a one-time conversion option would not be sufficient because of the ongoing potential for unjust discrimination that arises from a tolling system with parallel tolling methods operating at the same time. Therefore, the CA argued that any approval of the NBJ application should be conditioned such that TransCanada include in the Mainline tariff a provision to provide shippers with an ongoing right to convert between conventional zoned FT service and segmented point-to-point service. The CA acknowledged that the conversion mechanism does not eliminate the discrimination that arises from having parallel toll designs on the system. However, from CA's perspective, providing all shippers with the ability to avoid being adversely affected by the different toll regimes would be sufficient mitigation.

Ontario

Ontario identified a series of concerns related to TransCanada's proposal for a new receipt and delivery point at NBJ and argued that the Board should dismiss TransCanada's application. Ontario noted that it was not clear that the proposal for NBJ was the best policy choice and that TransCanada's analysis of alternatives appears to be limited or non-existent. In addition, while TransCanada was considering a future exchange service between NBJ and Dawn, the lack of this element in TransCanada's application suggested that the application was either incomplete or the first step in a two-stage process.

Ontario noted that TransCanada failed to formally engage the TTF on the NBJ proposal and suggested that this process should have been more fully utilized in this instance.

Ontario submitted that TransCanada failed to take into account the implications of the cost of fuel-on-fuel for transportation segmented at North Bay. For shippers with short-haul contracts from NBJ, fuel must be provided at the NBJ receipt point. However, since natural gas could not enter the system at NBJ, the short-haul shipper must pay for the additional fuel and the transportation of that fuel to NBJ. Ontario noted that TransCanada conceded that it did not consider that a shipper from NBJ must pay for the additional fuel and the transport of that fuel to NBJ. Ontario argued that the economic advantage of short-haul from NBJ would therefore be

less than initially contemplated by TransCanada. Ontario further argued that, because of the consequences of fuel-on-fuel, the issue of load balancing at NBJ remains unresolved.

Ontario argued that TransCanada's application does not resolve or address the issues related to contract conversion since there was no process for existing shippers, and shippers exercising renewal rights, to convert to segmented service.

Ontario noted that transportation contracts from NBJ would contain a fixed energy charge that recovers contract administration and gas metering. However, Ontario noted that there are no metering facilities at NBJ.

Quebec

Quebec opposed the creation of a new receipt and delivery point at NBJ because, in its view, NBJ would delay attempts to diversify sources of supply. Quebec noted that access to the Dawn hub is critical to Quebec shippers. It noted that Quebec distributors have relatively little local storage and must rely on storage at Dawn to balance their operations. In addition, due to favourable prices at Dawn and the market's strong level of liquidity, Quebec shippers are increasingly choosing to transact at Dawn. Quebec argued that it is essential for Quebec shippers to access Dawn via the shortest and most economical path, which is the Union system. Since Union is currently operating at full capacity, Quebec suggested that an increase in capacity on the Union system would be a positive development for Quebec.

Quebec argued that adding a new receipt and delivery point at NBJ could potentially increase the postage stamp rate that the majority of Quebec consumers have to pay. It noted that, in the Eastern Zone, all shippers in the NCDA and the CDA would see an economic benefit to segmenting their transportation contracts at NBJ. However, shippers in the EDA would not have a similar benefit. Quebec noted that, if all those shippers exercised the option of segmenting their contracts at NBJ, the impact on the Eastern Zone toll and shippers in Quebec would be an increase of up to $0.026 per GJ by 2008-2009.

Alberta Northeast Gas Limited

ANE noted that it has purchased substantial volumes of natural gas which are transported by TransCanada and exported at Iroquois, Ontario. ANE submitted that, with the expiry of its existing gas supply contracts in 2006, it wishes to diversify its supply to include purchases at Dawn, rather than at Empress. It noted that this intention was reflected in a letter sent to TransCanada inquiring about the provision of up to 237 TJ/d of capacity from Dawn commencing November 2006. ANE understood this request for service would include transportation from Dawn to Parkway on the Union system and capacity on the TransCanada system to Iroquois.

ANE noted that, for a number of reasons expressed by others in the proceeding, it was not interested in purchasing gas at NBJ. ANE submitted that it expects TransCanada to take all necessary steps to contract for, seek approval of, and build whatever facilities may be required to transport the aggregate of all service requests. ANE argued that, if it submits a service request and meets all the requirements for new services, then it expects that the system will be expanded in a timely manner to meet the request, irrespective of the status of the NBJ proposal. ANE

concluded that short-haul services from Dawn should remain an integral part of TransCanada's services and that incremental services must be provided on a timely basis.

Letters of Comment

The Board received letters of comment from BV Energy Group Inc., Coral, Energy Source Canada Inc., Energy Trust Marketing Ltd., Six Nations Natural Gas, and Sprague Energy. These letters generally expressed support for TransCanada's NBJ proposal and suggested that the new receipt and delivery point at NBJ would be an enhancement that would provide value to shippers and flexibility to the market.

5.3.3 Response of TransCanada

TransCanada disputed the allegation by the Eastern Utilities that NBJ is anti-competitive. It indicated that a new receipt and delivery point at NBJ would allow TransCanada to offer unutilized pipeline capacity on its integrated system as a competitive alternative to the expansion of other systems. NBJ would improve the ability of TransCanada to compete for markets and throughput to correct a structural disadvantage, namely the lack of a midstream contracting point tied to the NOL. It claimed that NBJ responds to the demand for short-haul transportation and would provide the market with a new short-haul transportation alternative to Dawn. In its view, NBJ would enhance competition, not hinder it.

TransCanada acknowledged that the market has signaled a desire for short-haul service from Dawn, which is the only currently available option. NBJ would provide shippers with an additional short-haul contracting alternative. TransCanada argued that, while CAPP suggests the problem to be solved is Dawn, the real problem is the existence of excess capacity on the NOL. In this connection, TransCanada argued that its proposal for NBJ was designed to address the problem of excess capacity by providing an alternative, not a replacement, to Dawn.

TransCanada submitted that NBJ would not block the development of other supply options, nor would it preclude future capacity expansions on other pipelines. In its view, opposition to NBJ is based on either a misunderstanding or mischaracterization of TransCanada's position on whether it would oppose attempts to expand service from Dawn to Parkway. TransCanada argued that, if the market wants capacity from Dawn, and if the market meets the requirements for additional facilities, it is ready to accommodate those requests. TransCanada suggested that the market has not yet met the requirements to proceed with the development of additional capacity. In this regard, TransCanada noted that it has neither received nor declined any requests for additional capacity or facilities. However, TransCanada noted that in a recent joint open season for existing and new capacity, it received no bids for new capacity other than from TransCanada Energy Ltd. for a power project at Bécancour.

TransCanada rejected claims that it was trying to economically block Dawn by investing in sunk costs so as to make an argument that it would not be economically efficient to approve an expansion by Union. TransCanada noted that the NOL was approved by the Board and was entirely contracted until competitive projects were approved and constructed. The excess capacity on the NOL was a function of decisions that allowed the capacity to be built and not a condition created by TransCanada on its own system. In addition, TransCanada argued that the

approval of NBJ would not lessen the likelihood of the approval of an expansion of the Union system by Union's regulator.

TransCanada agreed that conventional WCSB production has peaked or will peak in the next few years. However, TransCanada noted that other North American supply basins are at least as mature and that the WCSB is still an important source of supply. TransCanada further noted that, by 2007/2008, there will be over 142 million m^3/day of WCSB gas supply available for contracting. TransCanada also questioned whether meaningful supply diversity has resulted from the Vector Pipeline. TransCanada estimated that WCSB supply into Dawn has changed from 88 percent in 1999 to 85 percent in 2003.

TransCanada was of the view that NBJ has all the attributes required for liquidity, and therefore has the potential to develop into a liquid trading point. NBJ has available capacity, balancing alternatives, ample supply, access to alternative markets and the potential to attract a significant number of diverse counterparties. TransCanada asserted that multiple pipeline interconnects and physical storage capability are not necessary elements for a liquid trading point and provided as examples the Demarc and Malin trading points that developed liquidity without all the physical attributes normally ascribed to a hub.

TransCanada suggested that, if NBJ does not develop sufficient liquidity, shippers still have other options such as Dawn or Empress. Moreover, since there are no costs to implementing NBJ, TransCanada suggested that the future liquidity and question of benefits is not germane to whether NBJ should be approved. TransCanada suggested that, while no one can state for certain that liquidity will develop, the opportunity should be made available to the market. In TransCanada's view, if liquidity develops, competition and economic efficiency would be enhanced; if not, no one would be harmed.

TransCanada refuted suggestions that NBJ would result in unjust discrimination by superimposing two different toll designs on a single pipeline system. TransCanada submitted that the NBJ proposal, in and of itself, does not introduce point-to-point tolling. TransCanada noted that it has used the point-to-point methodology to calculate tolls for both domestic and export service for many years. TransCanada stated that it is proposing the same application of the common system average unit costs and the current distance methodology for NBJ as was approved for the SWZ.

Although NBJ is located within the Northern Zone, TransCanada submitted that its proposal to toll NBJ on a point-to-point basis, separate from the NDA, would reflect the different circumstances and condition of gas transported to the NDA. Gas transported to the Northern Zone would be delivered to multiple delivery points for end-use consumption, while gas transported to NBJ would be traded before it would be transported elsewhere for consumption. In order to prevent NBJ from shifting the load centre of the Northern Zone, it would be appropriate to treat service to NBJ as a distinct service.

TransCanada did not support the CA's proposal for contract conversion. TransCanada submitted that the toll difference between segmented and zonal service is justifiable because there are two different service entitlements. Services include diversion rights, delivery point changes and storage opportunities. A single party holding both parts of a segmented service to the eastern

market area would have different contractual rights relative to a party that has a single long-haul zonal contract for service to the same delivery point. TransCanada noted that shippers with short-term contracts, or contracts about to expire, do not have a right to the capacity. They would have to take the risk of competing in an open season for that capacity.

TransCanada argued that, for a regulated utility, discrimination between tollpayers is inevitable, and therefore, there is no absolute prohibition against discrimination. TransCanada argued that it is the degree of discrimination and the factual context that is relevant in determining whether discrimination is unjust, and therefore contrary to the NEB Act. TransCanada suggested that the CA was arguing that any discrimination, regardless of degree, must be prohibited. TransCanada submitted that determining whether discrimination is unjust, and therefore contrary to the NEB Act, is a question of fact for the Board to decide. TransCanada concluded that, similar to the Board's ruling on the SWZ, when the evidence of NBJ is examined, if there is any discrimination at all, it would not be unjust.

TransCanada submitted that an external consultant was retained by TransCanada Corporation as part of a broad corporate planning and strategy initiative relating to its gas and power businesses. The result was the Consultant's Report, which discusses potential investment and value creation through an analysis of possible growth strategies including potential acquisitions, expansions and LNG investments. TransCanada indicated that the Consultant's Report was one of the inputs into its decision to cease efforts to develop a new, comprehensive business and regulatory model and that a small portion of the report related to NBJ. TransCanada declined to produce the Consultant's Report claiming that it had no relevance to this proceeding and was both confidential and subject to privilege. In response to Union's allegations of a lack or apparent lack of separation between regulated and unregulated business strategies, TransCanada argued there was no evidence that the Consultant's Report talks about dealings between the Mainline and unregulated affiliates.

TransCanada disagreed with the notion that the approval of NBJ would increase gas costs for eastern consumers. TransCanada claimed that the only way NBJ could increase costs would be if NBJ is more expensive and shippers are forced to use it, or if shippers choose to pay more due to the perceived value of NBJ. TransCanada concluded that NBJ would not increase the costs of existing alternatives in the marketplace.

TransCanada disagreed that its NBJ proposal was incomplete because it did not include an exchange service between NBJ and Dawn. TransCanada noted that the exchange service is not required to realize the benefits of a new receipt and delivery point at NBJ and that diversion rights can provide an effective exchange service.

TransCanada argued that the approval of NBJ should not be delayed. TransCanada suggested that approval in advance of the 2004-2005 winter season was necessary to allow for contracting experience and liquidity to develop in time to inform the important decisions on renewals in 2006. TransCanada noted that a total of approximately 4,400 TJ/d of firm capacity on the Mainline is eligible for expiry on 31 October 2006. Approximately 3,100 TJ/d of that capacity will be on one-year rolling contracts while 1,300 TJ/d of capacity reflects the expiry of long-term contracts.

With respect to contractual limitations on Dawn as a receipt point, TransCanada noted that its TBO contracts with Union expire in 2008. TransCanada indicated that the renewal provisions on Union are onerous and create a mismatch in risk between those renewal provisions and the renewal provisions on the Mainline. TransCanada indicated that it can only contract for system capacity as defined within the Mainline tariff and therefore system capacity was limited to the extent and duration of its TBO contracts. TransCanada took the position that it was therefore not appropriate to contract for capacity that it may not have in the future.

TransCanada indicated that if NBJ was approved, TransCanada would be closely monitoring its usage and would be willing to share that information at any time, but considered a timeframe of two to three years to be optimal.

5.3.4 Views of the Board

Background

TransCanada has applied for approval to establish NBJ as a new receipt and delivery point on the NOL of the Mainline. Although framed by TransCanada as a narrow request for the approval of a new receipt and delivery point, it was seen by many intervenors as raising a number of fundamental issues related to the use and future of the Mainline. As set out in Chapter 2 of these Reasons, these issues can be divided into two broad categories: market issues and corporate issues.

The market issues include the following. First, is NBJ responsive to the desires of the market? Second, is NBJ anti-competitive? Third, does NBJ lead to toll impacts which are unfair or unjustly discriminatory? In this regard, does it alter the structure of the market, leading to changes in cost responsibility, or affect the commodity cost of gas? Fourth, does NBJ violate the principles of zonal tolling? Fifth, have the implications of NBJ been fully assessed or are there issues which still need to be resolved?

Corporate issues include the following. First, has TransCanada discriminated against parties seeking access to Dawn? Second, should TransCanada be allowed to present proposals for change one at a time or should it be required to present a complete plan? Third, is the operation of the Mainline being inappropriately influenced by the business strategies of unregulated affiliates? Fourth, is there a clear method for establishing receipt and delivery points?

Market Issues

Is NBJ responsive to the desires of the market?

TransCanada, as owner and operator of the Mainline, has primary responsibility to ensure that the pipeline remains adapted to a rapidly changing natural gas market environment. TransCanada is attempting in

various ways to respond to a decrease in long-haul contracted capacity and related flows on the NOL and to devise strategies that will enable the Mainline to compete effectively for transportation volumes. The Board is of the view that, subject to the merits of specific proposals put before it, efforts of this kind are to be supported.

The evidence adduced in this proceeding indicates that many of TransCanada's shippers wish to contract for gas supply closer to the downstream market in order to reduce exposure to the demand charges associated with gas transportation or to access alternative sources of supply. The evidence also indicates that TransCanada's current ability to accommodate additional requests for short-haul transportation from Dawn is limited. Existing short-haul capacity from Dawn – using either the direct physical path or the integrated system - has been fully contracted, so that the provision of additional short-haul capacity from Dawn would require additional physical capacity.

The evidence is clear that NBJ does not possess the attributes normally associated with fully functioning market hubs. For example, it lacks physical storage, does not interconnect with other pipelines, and provides access only to the WCSB. Accordingly, it would not provide the market with all of the services that are available at Dawn. However, in the Board's view, this does not preclude NBJ from having the potential to provide some value to some market participants. As submitted by TransCanada, NBJ has the potential to attract parties who would contract from Empress to NBJ or from NBJ to points east, and it is connected to alternative markets. If approved, NBJ would provide a midstream contracting point on TransCanada's NOL – a line which has been experiencing excess capacity – where trading between parties could take place.

Is NBJ anti-competitive?

The Board is not persuaded by the arguments presented by the Eastern Utilities that approval of the NBJ proposal would lead to an anti-competitive outcome. Although TransCanada indicated that it would oppose expansion of infrastructure that it views as uneconomic or redundant, TransCanada has also stated that if the market meets the requirements for additional facilities, it is ready to deal with and accommodate these requests. Further, the expansion of infrastructure is subject to regulatory processes and a determination of public interest. If the relevant regulator determines that an expansion is warranted, it does not lie within TransCanada's power to prevent such an expansion.

Does NBJ lead to toll impacts which are unfair or unjustly discriminatory? In this regard, does it alter the structure of the market, leading to changes in cost responsibility, or affect the commodity cost of gas?

TransCanada provided evidence to illustrate the toll impact of approving NBJ under a variety of scenarios. The evidence shows that if NBJ is not used, there is no toll impact. If segmentation of transportation service takes place, the impact on tolls would be uneven, with the benefits of segmentation accruing to only certain shippers. Under the current cost of service framework, the reduced revenue from those shippers who benefit from segmentation would be made up by shippers for whom segmentation is not an economically attractive option, many of whom, like Gaz Métro, also did not see a benefit from segmentation through the SWZ, or by those for whom segmentation is not currently contractually possible. Accordingly, the Board agrees with those parties who submit that NBJ has the potential to shift the way in which responsibility for the revenue requirement is shared amongst shippers.

At the same time, the evidence presented in this proceeding of an open season for new capacity on the Union system to serve markets from Dawn to Kirkwall, Parkway, and points east, as well as evidence with respect to an open season on Vector, suggests that, in the absence of a competitive response by TransCanada, further offloading of the Mainline is possible.

If further offloading occurs, the tolls to remaining shippers will increase. In addition, if the market continues to move to short-haul contracting, resulting in an expansion of Union's system, which is underpinned by the provision of short-haul service by TransCanada, this may result in higher tolls on TransCanada for remaining shippers.

Therefore in considering the impacts of NBJ on tolls, in the Board's view, the relevant consideration is not, simply, what is the impact on tolls, with and without NBJ, if nothing else changes, but also what is the likely impact on tolls, with and without NBJ, in a fast-changing environment.

It is likely that, in the absence of action from TransCanada, further erosion of long-haul volumes and further shifting to short-haul transportation would take place. Accordingly, the Board cannot discount the possibility of TransCanada's revenue requirement being collected from a decreasing customer base, leading to upward pressure on tolls. If NBJ is successful in retaining long-haul volumes, the evidence indicates that the potential increases in the Mainline tolls are likely to be less than if they are not retained. TransCanada's evidence indicates that the maximum negative impact arising from NBJ on the Eastern Zone tolls, if current volumes are retained, but no incremental volumes are attracted, is $0.026 per GJ by the 2008-2009 contract year. However, if NBJ is successful in attracting sufficient additional volumes to the Mainline, TransCanada's evidence

indicates that its tolls will decline. For example, 243 TJ/day of incremental volumes from Empress to the Iroquois export point through NBJ would result in a toll decrease of $0.06 per GJ for all Eastern Zone shippers.

The Board is not persuaded by the position put forward by the Eastern Utilities that, if increased demand in Alberta leads to increased prices at AECO and if NBJ is approved to the exclusion of any other receipt or delivery points on TransCanada's system, gas costs to eastern consumers may increase. The Board notes the submission of TransCanada that this could only occur if NBJ is more expensive than other routes and consumers are forced to use it or if shippers chose to pay more because of the perception of increased value.

With respect to the argument put forward by CA that approval of the NBJ proposal would result in otherwise similarly situated shippers paying different tolls depending on their contractual ability to take advantage of the NBJ proposal, the Board does not find that approval of NBJ would result in unjust discrimination. Gas transported to NBJ and then from NBJ to end-markets would be transported under sufficiently different conditions from gas transported directly to end markets under one contract to justify a difference in tolls. Accordingly, CA's proposal for contract conversion is not required.

Does NBJ violate the principles of zonal tolling?

The removal of NBJ from the NDA and its subsequent tolling on a point-to-point basis is a significant change. However, as with the introduction of the SWZ, the toll methodology would not fundamentally change with the introduction of NBJ. NBJ tolls would be based on the same application of common system average unit costs and distance methodology as was approved for the SWZ. Further, the Board accepts TransCanada's view that gas transported to NBJ for further transportation would be transported under different circumstances and conditions than gas transported to the NDA. Accordingly in the Board's view, the NBJ proposal, while innovative, would continue to respect the tolling principles outlined in Chapter 2 and on which TransCanada's tolls have historically been based.

Have the implications of NBJ been fully assessed or are there issues which still need to be resolved?

The Board is of the view that while the requirement to provide fuel gas at NBJ may detract from the economics of the proposal and may present challenges for load balancing, no evidence was adduced to suggest that these factors, in and of themselves, would prevent the functioning of NBJ. The Board is of the view the fuel gas issue is one that could be addressed

and resolved through the TTF, and should not prevent the timely implementation of NBJ.

With respect to the collection of two fixed energy charges to and from NBJ, the Board accepts TransCanada's justification for the collection of separate administration charges related to each of the two separate components of a segmented service.

Corporate Issues

Has TransCanada discriminated against parties seeking access to Dawn?

As discussed in Chapter 4, the Board does not accept Union's submissions with respect to this issue. However, the Board is concerned with the process that occurred once concerns were raised with TransCanada. The evidence indicated that some contracts were changed while others were not and that there was no organized attempt to respond to the problem in its entirety. The Board expects TransCanada to implement procedures to prevent this type of situation from occurring and may examine these procedures for compliance in future audits.

Should TransCanada be allowed to present proposals for change one at a time or should it be required to present a complete plan?

The Board notes CAPP's view that the successful development of NBJ as a trading point may require mechanisms to facilitate exchanges between Dawn and NBJ and that these were not presented at this time. In addition, the Board notes that TransCanada was able to identify ten potential future service changes that are under consideration.

The Board is concerned with the efficacy of examining these service changes one at a time. In keeping with previous decisions,[6] the Board would prefer for TransCanada to present proposals, such as NBJ, within an overall mid- to long-term strategic outlook. Although TransCanada has the freedom to frame its applications as it sees fit, the Board notes that the absence of a discussion on TransCanada's mid- to long-term strategy makes the evaluation of proposals difficult. This issue is further discussed in Chapter 7.

Is the operation of the Mainline being inappropriately influenced by the business strategies of unregulated affiliates?

The evidence showed that certain senior executives of the Mainline had read a confidential consultant's report discussing the business strategies of the Mainline and unregulated affiliates. This raises concerns that decisions made with respect to the operation of the Mainline may have

[6] RH-1-2001 Reasons for Decision (Chapter 2, Page 14); RH-1-2002 Reasons for Decision (Chapter 8, Page 76).

been influenced by the Mainline executives' awareness of the business objectives of unregulated affiliates.

While these concerns do not prevent the consideration of the NBJ proposal, the Board is of the view that it is important to reinforce the direction given to TransCanada in the Reasons for Decision with respect to Phase 1 of RH-2-2004. Specifically, the Board expects TransCanada to work with the TTF to develop a revised Code of Conduct that will address this type of situation. As stated in Chapter 2 of these Reasons, a Code containing clear rules that govern the interaction between TransCanada and its affiliates could result in improved relationships between TransCanada and its shippers.

Is there a clear method for establishing receipt and delivery points?

In July 2003, TransCanada posted a notice for an open season in which it indicated that it would offer service from domestic delivery areas. This led to complaints from many parties, who in essence alleged that TransCanada had disregarded established regulatory procedures in how it introduced the new receipt points. As set out in Section 1.1 of these Reasons for Decision, TransCanada disagreed with these parties' assertions and maintained that it had acted appropriately. Nonetheless, TransCanada advised that it would file an application with the Board for approval to establish certain receipts points. On 15 September 2003, TransCanada filed its application, which was later revised on 31 March 2004.

The filed application differed from the proposed service offered in the open season in that it did not offer service from domestic delivery areas but instead proposed the establishment of NBJ as a discrete receipt and delivery point. TransCanada stated that there was some general discussion at the TTF in regard to the general concept of something like NBJ, but the details of the application were not shared prior to the application being filed. As a result, it does not appear that the TTF had a clear view as to what was being proposed until after the application was filed with the Board.

TransCanada has stated that it recognizes from the nature of the complaints and a review of its past practices that greater definition of the appropriate process to establish new receipt and delivery points on the Mainline is required. Accordingly, TransCanada proposed on 22 August 2003 to raise and discuss this issue with the TTF.

The Board shares the concerns expressed by several parties regarding the transparency of the process used to introduce the NBJ proposal. As outlined above, the proposal underwent several iterations, not all of which

appeared to have been shared in a meaningful way with TransCanada's stakeholders.

In the Board's view, while innovation is to be supported, the methodology that is being used by TransCanada to introduce service changes needs to be considerably improved. This is particularly the case given that TransCanada has moved away from its apparent previous desire to implement a comprehensive plan (see Chapter 7), and has now adopted an incremental approach to be achieved within the current regulatory model.

The need for transparency is exacerbated in this case by the fact that the Mainline tariff does not codify the information that needs to be supplied to TransCanada in order for a party to request the addition by TransCanada of a new receipt or delivery point. TransCanada acknowledged that it does not have a formally documented process for evaluating requests for new service. Although TransCanada indicated that, in practice, it has evaluated the implications of adding a receipt or delivery point by assessing available capacity, impacts on tolls, engineering conditions, and the potential establishment of precedents, TransCanada did not demonstrate that this has been done in a systematic manner. As a result, it is difficult for parties to know what information is required to allow TransCanada to evaluate a proposal for a new receipt and delivery point and whether the criteria are being consistently applied to all proposals so as to achieve a level playing field.

Accordingly, the Board is of the view that TransCanada ought to codify within the Mainline tariff: i) the information required by TransCanada to evaluate proposals for new receipt and delivery points; ii) the criteria used to evaluate such proposals; and iii) the expected timeframe required to evaluate and respond to proposals for new receipt and delivery points. The Board is of the view that TransCanada should raise and discuss this issue with the TTF and file, no later than 28 February 2005, proposed tariff amendments for the Board's approval. In its filing, TransCanada should specifically explain why the proposed information requirements are deemed necessary by TransCanada to be able to assess a proposal, and the relevance of the proposed criteria to such an assessment. Further, the tariff amendments are expected to be fully compatible with the tests to which TransCanada subjected the NBJ proposal.

Conclusion

The Board is of the view that, while the approval of NBJ as a receipt and delivery point carries with it some uncertainty, on balance, and under a majority of scenarios, the potential benefits to the system and its users from the approval of NBJ as a new receipt and delivery point outweigh the potential negative impacts that approval of NBJ could have on some shippers, particularly those in the EDA.

At the same time, the Board is of the view that in order to be fully responsive to the diverse and evolving desires of the marketplace, it is important that TransCanada explicitly set out the manner in which it will assess proposals for new receipt and delivery points, whether advanced by itself or other parties, and to codify this within the Mainline tariff. Further, the Board is of the view, given that a number of proposals are being advanced by other parties, this needs to be accomplished in a timeframe which does not impede the natural evolution of the market.

The Board is of the view that TransCanada should file, and serve on its Mainline shippers and TTF members, a report on the use of NBJ within two years of implementation of the new receipt and delivery point, similar to the report to be filed by TransCanada with respect to the SWZ. The report should present information on the use of NBJ, any issues that have arisen from its implementation, possible strategies for dealing with these issues, and an assessment of the continued desirability of NBJ. The Board notes that TransCanada did not object to such a requirement.

Decision

The Board directs TransCanada to file, no later than 28 February 2005, proposed tariff additions codifying the information TransCanada requires, the criteria to be applied by TransCanada, and the expected timeframe required to evaluate and respond to proposals for new receipt and delivery points.

The Board approves the addition of North Bay Junction as a receipt and delivery point, as described in the application, to be effective 28 February 2005.

The Board approves the corresponding tolls to and from the North Bay Junction, in accordance with the established tolling methodology, as well as the applied-for amendments to the Mainline Transportation Tariff General Terms and Conditions.

TransCanada is directed to file with the Board, on or before 1 March 2007, a report on the use of NBJ.

5.4 Parkway

By letter dated 7 April 2004, Union requested that the Board revise the list of issues that was developed after the October 2003 workshop to specifically allow for alternative ways to address the developments said by TransCanada to require the NBJ proposal. The Board amended Issue 3 in the RH-3-2004 Hearing Order to read "The appropriateness of the North Bay Junction

proposal and any alternate proposals". One alternative proposal advanced by the Eastern Utilities was the establishment of Parkway as a receipt and delivery point. Parkway is located near Oakville, Ontario, at the interconnection between the east end of the Union system and the Mainline (see Figure 5-1).

5.4.1 Proposal and Position of the Eastern Utilities – Parkway in General Terms

The Eastern Utilities proposed that the Board establish one or more receipt and delivery points to access short-haul capacity markets in Eastern Canada. They submitted that such an action would promote efficiency in natural gas markets by allowing shippers choice and access to alternative sources of supply. In doing so, the Eastern Utilities contended, the Board would facilitate the reliability of gas service and the adequacy of supply, and help to keep the price of delivered gas as low as possible.

The Eastern Utilities suggested that any points which could physically access multiple supply sources, or interconnect with pipelines serving other end-use markets, would create additional options for TransCanada and its shippers. The Eastern Utilities identified Parkway as an obvious choice for such a point.

The Eastern Utilities asserted that Parkway possesses a number of attributes that pre-position it as an active trading location: trading already occurs at Parkway; a substantial amount of supply is delivered and consumed in the Parkway vicinity or moved through the Parkway point; Parkway has direct access to storage; and, Parkway is directly linked to Dawn, major markets and diverse supply.

The Eastern Utilities submitted that the establishment of multiple receipt and delivery points is a positive move for the overall efficiency of the gas market. The Eastern Utilities further argued that Parkway's access to diverse supply sources, as compared with NBJ's sole access to the WCSB, would reduce the risk of localized price volatility or short-term supply disruptions.

Similarly, EGD stated that the establishment of Parkway as a receipt and delivery point would help facilitate the operation of the market. EGD felt that Parkway would be a better point than NBJ to facilitate trading and that it would help to improve liquidity and allow Eastern LDCs and other parties to better manage their gas supplies.

Union submitted that enhancing the market's ability to transact for supply at Parkway would be in the spirit of giving the market the choice as to where trading should develop. Along the same vein, the Eastern Utilities stated that, by approving Parkway in conjunction with NBJ, the market would have the opportunity to decide what it preferred.

Union said that it did not have the requisite information to accurately make projections regarding the potential toll impacts of a Parkway point. EGD suggested that there are details that would have to be worked out in terms of the mechanics of how Parkway would function and the manner with which some of the flows would be dealt. Union also stated that modifications to existing tolling, operational and gas management functions would improve the ease of transacting supplies at Parkway. Union and EGD acknowledged that further discussions and exploration of the proposals with TransCanada and other stakeholders would be required.

Throughout the course of the proceeding, four variations on a Parkway proposal were put forward as alternatives to Dawn and NBJ and to facilitate both trading at Parkway and the operation of the market in the CDA and EDA. The four Parkway proposals are as follows: Parkway-Union; Parkway Belt; Parkway at Mainline Valve 205-2; and, Enbridge CDA and Union CDA.

The Parkway-Union proposal would involve the extraction of a Parkway receipt and delivery point from the Union CDA and the Eastern Zone. The Parkway Belt proposal envisages the formation of a Parkway Belt receipt and delivery point which could be used as a trading hub for all of the supply that travels through Parkway on either the TransCanada or Union systems, as well as all of the deliveries that are made to either the Union CDA or the Enbridge CDA. EGD's concept for Parkway involves the designation of a new receipt and delivery point at Mainline Valve 205-2. Lastly, the Enbridge CDA and Union CDA proposal would involve the establishment of the Enbridge CDA and the Union CDA as receipt and delivery areas to facilitate trading and accommodate title transfers.

Gaz Métro supported the Parkway proposal in the instance where Parkway would not be removed from the Eastern Zone, thereby increasing flexibility for some system users while not creating negative effects for other users. Gaz Métro had no objection to the proposal being approved in principle then sent to the TTF to determine the terms and conditions of its implementation.

At the end of the proceeding, Parkway proposals were generally considered incomplete; nonetheless, the proponents sought various forms of approval for their proposals as described in more detail below.

5.4.2 Proposal and Positions of Parties – Parkway-Union

Union first introduced the Parkway-Union proposal in a response to an information request. Under Union's proposal, the Parkway-Union point would be extracted from the Union CDA and the Eastern Zone, thereby becoming a distinct point of delivery for long-haul transportation from Empress and short-haul transportation from St. Clair or Dawn. Volumes delivered to Parkway would no longer be used to calculate the Eastern Zone toll, resulting in an increase to the Eastern Zone toll. Since the point-to-point toll to Parkway-Union would be less than the Eastern Zone toll, Parkway would become more attractive as a source of supply.

TransCanada asserted that the magnitude of the tolling impacts on the system cannot be determined before contracting arrangements are determined; however, any contracts removed from the Eastern Zone would impact the level of the Eastern Zone toll.

TransCanada felt that an assessment of the appropriateness of removing Parkway-Union from the Eastern Zone would be required because some deliveries would be for end-use consumption while other transactions would solely be for trading purposes. TransCanada submitted that, without this understanding, it would be impossible to determine the expected utilization and contracting. Furthermore, if the types of transactions that would occur at Parkway-Union are similar enough in nature to those that would occur within the Union CDA, it might not be appropriate to have different tolling treatments.

TransCanada also noted that existing contracts to the Union CDA would have to be reworked to determine shipper needs at Parkway as compared with other locations in the Union CDA. In order to do so, TransCanada felt that an analysis of available capacity and a discussion as to the appropriate process for re-contracting would be required.

Finally, TransCanada stressed that the existing Operational Balancing Agreement (OBA) for the Union CDA would have to be reworked. Presently, the OBA covers all meters in the Union CDA. TransCanada explained that removal of Parkway-Union from the CDA would require an OBA for Parkway-Union only and a new separate Limited Balancing Agreement (LBA) between the pipeline and distributor for the remaining meters in the Union CDA.

By the termination of the proceeding, the Parkway-Union proposal was not actively supported by any party.

5.4.3 Proposal and Positions of Parties – Parkway Belt

The Parkway Belt model was also proposed by Union in a response to an information request. Union asserted that a Parkway Belt would expand trading opportunities over a larger volume of supply and described it as the interconnection between the Union and TransCanada systems and the boundary between the Union and Enbridge CDAs.

Union asserted that Parkway's existing hub potential is currently impeded by certain tolling, operational and gas management functions. If modifications were made to these functions, Union believes that supply traveling to, in, or through, the Parkway Belt could be freely traded. Union proposed that a single, unique receipt and delivery point (known as the Parkway Belt Point) be established for tolling and contracting purposes. Union envisioned that market participants would trade volumes at the Parkway Belt Point and the eventual final physical purchaser of the supply would transport that supply from the Parkway Belt Point to end markets.

Union favoured the Parkway Belt proposal, because unlike the Parkway-Union proposal, Parkway would remain a delivery location within the CDA and would allow the associated long-haul volumes to be used in calculating the Eastern Zone toll.

Union acknowledged that short-haul contracts originating at Parkway may or may not attract the same tolls as those originating from the Union and Enbridge CDA load centres, and suggested that such details be worked out by the TTF. Union further recognized that existing tolling and gas management functions on the TransCanada system would need to be reviewed. Finally, Union suggested that the appropriate location of a Parkway Belt Point would be an issue which would need further discussion prior to being resolved, but did make reference to Mainline Valve 205-2 as one possible location.

Union requested that the Parkway Belt proposal be approved in principle and then referred to the TTF for the settlement of final details on a time-limited basis.

TransCanada expressed a number of concerns with the Parkway Belt proposal. First, TransCanada pointed out that shippers delivering gas to a hub location encompassing numerous points spread over a large geographic area would be able to move gas within the hub without

additional transportation charges. TransCanada submitted that this would be of particular concern for volumes which entered the hub from another pipeline system. TransCanada contended that, theoretically, it would be possible for a shipper to receive Mainline services within the hub (e.g., from Parkway- Union to the CDA) without paying a toll for such service. TransCanada affirmed that it had not had the opportunity to assess the toll treatment of the Parkway Belt model to ensure that tolls would be just and reasonable and would appropriately recover costs, nor had it had the opportunity to assess the competitive impacts to TransCanada.

TransCanada also indicated that it would be necessary to rework existing contracts to the Union CDA to determine shipper needs at Parkway as compared with other locations in the Union CDA. Furthermore, an analysis of operational impacts and available capacity, as well as a discussion as to the appropriate process for re-contracting, would be required to determine how to accomplish this. Finally, TransCanada pointed out that new OBAs and LBAs likely would need to be negotiated.

5.4.4 Proposal and Positions of Parties – Parkway at Mainline Valve 205-2

In a response to an information request, EGD proposed the concept of a new receipt and delivery point at Mainline Valve 205-2. The proposal was subsequently refined during the oral phase of the proceeding. The new point would be established upstream of, but proximate to, both Parkway-Enbridge and Parkway-Union. EGD submitted that this proposal would have no material impact on tollpayers and other services.

EGD proposed that the toll for long-haul service to Parkway would be the same toll as for FT service to the load centre of the Eastern Zone. Parkway would stay in the Eastern Zone for toll-making purposes, and would not affect the toll for long-haul FT service. The short-haul FT toll from Parkway would be calculated on a point-to-point basis to domestic delivery areas or export points. EGD submitted that, by using the Eastern Zone toll for Parkway, the potential for economic segmentation would be eliminated.

EGD felt that its proposal to establish Parkway as a trading point would result in similar contracting paths as the ones currently existing for short-haul FT service from Dawn through Parkway-Union and Storage Transportation Service (STS) from Parkway-Union. As such, EGD did not believe its proposal would lead to any significant contracting, operational, tolling or commercial impacts.

EGD argued that Parkway would have the same operational problems to resolve as NBJ, such as fuel-on-fuel and the implications for short-haul service downstream of the trading point. In its final argument, EGD requested that a new receipt and delivery point be designated at Mainline Valve 205-2, with its implementation conditional on operational problems being resolved by parties prior to a date specified by the Board.

5.4.5 Proposal and Positions of Parties – Enbridge CDA and Union CDA

Union proposed that the Enbridge CDA and the Union CDA be established as receipt and delivery areas for FT service to facilitate trading. In its final argument, Union requested immediate approval of receipt and delivery status for the Enbridge and Union CDAs to

accommodate title transfers. For a further discussion of domestic delivery areas being used as receipt points, please refer to Chapter 6 of these Reasons for Decision.

5.4.6 Positions of Other Parties – Parkway in General Terms

Ontario asserted that the establishment of Parkway as a receipt and delivery point would facilitate the operation of the market in the CDA and EDA. Further, Ontario felt that a Parkway point would assist trading within the market, thereby improving market liquidity and assisting the Eastern LDCs to manage their gas supplies. Ontario observed that Parkway remains a work in progress and left it to the Board to determine whether now is an appropriate time to designate Parkway as a receipt and delivery point.

Quebec stated that it would not oppose a Parkway model that did not affect the Eastern Zone toll; however, Quebec maintained that it would be preferable to review the implications and establish the terms and conditions of the Parkway proposal in greater detail prior to the proposal being approved.

TransCanada argued that Parkway proposals would still involve a toll from Parkway to the CDAs and that these alternatives are nothing more than different ways of "aggregating" volumes to be exchanged or traded at a new point. TransCanada's position was that the proposals of Union and EGD would require a thorough assessment by TransCanada and other stakeholders before they could be implemented.

CAPP was of the view that ideas should not be approved before it is understood how they would work.

IGUA submitted that there is no evidence of an urgent need for a new Parkway receipt and delivery point. IGUA further questioned whether such a point is needed, considering that some trading is already occurring at Parkway. Finally, IGUA stressed that if the Board decided to approve a new receipt and delivery point at Parkway, such approval should not become effective until the short-haul tolling imbalance problem it perceived (see Chapter 4) has been corrected and any operational issues have been resolved.

5.4.7 Views of the Board

The Board observes that while the Eastern Utilities filed joint evidence, they were not able to provide a clear and united consensus as to where a new Parkway point would be located, how it would function, or what the resulting impacts would be. The Board heard little evidence to suggest that the Eastern Utilities made attempts to resolve these issues prior to seeking approval for Parkway.

The Board notes that limited evidence was adduced to demonstrate the magnitude of the operational and tolling impacts which would result from Parkway being designated as a receipt and delivery point.

The Eastern Utilities acknowledged that further analysis would be required by TransCanada and other stakeholders before Parkway could be implemented. The Board believes it would be inappropriate to grant approval in principle to any of the Parkway proposals prior to this analysis being performed, because such approval could be interpreted as a determination of the public interest regardless of the outcome of the analysis.

The Board is of the view that it cannot grant approval, including conditional approval, to any of the Parkway proposals due to the insufficiency of the information available to assess potential impacts. Further, the Board finds that approval in principle of any of the Parkway proposals would fetter its subsequent discretion.

The Board expects that any future proposals to add receipt and delivery points, such as Parkway, will benefit from the codified information requirements, criteria and timeframe that TransCanada is required to set out in the Mainline tariff pursuant to the Board's direction in Section 5.3.4.

Decision

The Board denies all of the Parkway proposals at this time.

5.5 St-Nicolas

Gaz Métro and EGD, supported by Union, requested that the Board approve a new receipt point for natural gas at St-Nicolas and confirm that the toll design methodology for short-haul service from St-Nicolas would be the same as the methodology applicable for short-haul services from other receipt points. The request is related to the potential development of a new source of supply, imported LNG in Quebec. St-Nicolas is located on the south shore of the St. Lawrence River, across from Quebec City (see Figure 5-1), and is the easternmost point of the TQM system. St-Nicolas is currently a delivery point located within the Gaz Métro EDA and is part of the Eastern Zone.

5.5.1 Proposal and Position of the Eastern Utilities

The Eastern Utilities suggested that LNG delivered to Quebec would meet a significant part of the expected load growth in Ontario and Quebec, thereby reducing demand for natural gas from other sources. They also considered Quebec LNG to be a logical source of supply to the U.S. Northeast. They indicated that Quebec LNG would likely create an increased demand for gas storage to accommodate summer LNG imports and noted that the change in location of supply likely would result in changes to pipeline flow patterns and storage requirements. They submitted that, if and when LNG facilities were completed in Eastern Canada, reversing flow on

the TransCanada system, including TQM, could improve efficiency and create new options. They also submitted that the arrival of LNG flowing east-to-west might help debottleneck the currently congested path between Dawn and Quebec on the TransCanada system.

The Eastern Utilities expressed the view that successful development of LNG in Quebec may require a new receipt point at St-Nicolas to provide access to the TransCanada system, although Gaz Métro and EGD indicated that the proponents of the Rabaska LNG project (i.e., Gaz Métro, Enbridge Inc. and Gaz de France) have not yet held any discussions with TQM or TransCanada on a possible interconnection to the system. Access to TransCanada's integrated system would be required to effectively utilize the LNG imports that could be available from the Rabaska project by the end of 2008 and to provide certainty with respect to market access regardless of physical flow considerations. Creating a receipt point at St-Nicolas would enhance investors' ability to implement an LNG project, as this type of project requires long-term planning. Furthermore, the transportation path from that point to any downstream market is an important component of the overall LNG chain from the supply basin to the market. The Eastern Utilities expressed the view that competitive markets and related contracts and commitments would likely forge a link between St-Nicolas, Iroquois, Parkway, Dawn, Michigan storage, and ultimately back to Chicago, further enhancing this natural gas corridor's access to a large supply source for natural gas.

The Eastern Utilities submitted that the first and foremost benefit of LNG development in Quebec would be additional gas flow into eastern Canada's most populous and economically developed centres in Ontario and Quebec. Other benefits for eastern Canada included reliability, security and diversity of supply. The Eastern Utilities submitted that the Board should encourage new supply sources and diverse supplies accessible over non-TransCanada delivery systems. Gaz Métro and EGD stated that a determination by the Board in line with their request would help them evaluate contracting options for supply from the potential Rabaska LNG facility. Gaz Métro further suggested that such a determination would provide the market with a signal that the Board is supportive of LNG development.

In its pre-filed evidence, Gaz Métro asked the Board to confirm that the toll design methodology for short-haul from a new receipt point at St-Nicolas would be based on the same toll design principles currently applied to short-haul service from other receipt points. Gaz Métro expressed the view that east-to-west service from St-Nicolas would involve the same type of short-haul service as west-to-east service. During the hearing, Gaz Métro clarified that it was not seeking confirmation that the short-haul tolling methodology would not change; rather, it sought to confirm that the short-haul tolling methodology that would apply for transportation service originating at St-Nicolas would be the same as that applicable elsewhere on TransCanada's integrated system and that there would be no discrimination just because the gas is not coming from Western Canada. In particular, Gaz Métro submitted that the St-Nicolas to Dawn toll should be the same as the Dawn to St-Nicolas toll. Gaz Métro further clarified that it understood that the Board would assess the prudency of the costs associated with interconnection facilities and other facilities required for gas to flow from St-Nicolas when these facilities are being applied for, and that the Board may, at that time, wish to reassess the applicable toll methodology should the facilities required be significant.

Gaz Métro pointed to the Board's RH-R-1-2002 Decision in support of its position that the onus to prove that the existing toll methodology is no longer suitable is on the party making that request. Gaz Métro argued that TransCanada tried to reverse the burden of proof by suggesting that Gaz Métro should prove to the Board that its request for service, when submitted, would have no impact on the system. Gaz Métro and EGD suggested that deferring the designation of St-Nicolas as a receipt point until such time as a request for service actually occurs would have no direct impact on them but would not provide some of the certainty that they are looking for when evaluating contracting options for supply from the facility. They affirmed that certainty could also be gained by establishing the tolling methodology at this time. Gaz Métro also noted that if the St-Nicolas receipt point is not used, there would be no impact on users of the TransCanada system.

Gaz Métro submitted that TransCanada was discriminating against it by requesting information for St-Nicolas that was not sought with respect to NBJ, or prior to making East Hereford or Iroquois receipt points on the TransCanada system. Gaz Métro expressed its belief that the only information needed by TransCanada to respond to a service request is: identification of the receipt and delivery points; service start and end date; daily maximum and minimum capacities; the type of service required; the requestor's name and address; and, a cheque for $10,000.

Gaz Métro indicated that, in its view, any difference in toll treatment for volumes that flowed from east to west on the existing system, instead of west to east, would be unjustly discriminatory and cited, in support, that the toll between Chippawa and Iroquois was the same for both directions.

Gaz Métro expressed the view that the TQM system is fully integrated with the TransCanada Mainline for tolling and operational purposes, as if it was only one system. Gaz Métro noted that all additional requests for service to the Gaz Métro franchise that took place since the TQM system came into service have been addressed directly to TransCanada. Gaz Métro submitted that TransCanada indicated that it might raise the relevance of continuing to fully incorporate the TQM cost of service within the Mainline's cost of service. Gaz Métro questioned why this issue was raised with respect to St-Nicolas when it was not raised when TransCanada agreed to provide service from East Hereford, an export point on the TQM system. Gaz Métro submitted that since East Hereford is designated as a receipt and delivery point on TransCanada's integrated system, TransCanada would be required to apply the Mainline tariff to any request for service at that location, without proposing a change in contracting practices. Gaz Métro noted that East Hereford is currently being used as a receipt point to facilitate IT backhauls. Gaz Métro further noted that the inclusion of TQM's cost of service in TransCanada's cost of service dates back to the GH-4-79 Decision, which involved approval of the TQM system as an extension of the TransCanada system. It also noted that this approach was confirmed in all subsequent Board decisions, including RH-3-86, when the approach was last examined.

Gaz Métro acknowledged that St-Nicolas is already a receipt point on the TQM pipeline, with respect to the Transportation and Storage service (TS-SCGM), which is used by Gaz Métro to transport gas stored at St-Flavien. Similarly, Trois-Rivières is also a receipt point on TQM which allows Gaz Métro to transport gas stored at Pointe-du-Lac. Gaz Métro noted, however, that while it contracts directly with TQM for the TS-SCGM service, it views this service as

incidental and auxiliary, and considers it an exception to the rule that all contracting takes place through TransCanada.

Gaz Métro submitted that TransCanada is the only TQM capacity-holder able to deliver gas at each of the delivery points on the TQM pipeline. In response to an information request, EGD indicated its understanding that under TransCanada's existing firm service contract with TQM, TransCanada cannot provide a TBO service from St-Nicolas to any and all delivery points on the TQM system. However, EGD saw no apparent reason why TransCanada could not procure an amendment to its existing contract or execute a discrete firm service contract that would allow TransCanada to do so.

5.5.2 Positions of Parties

TransCanada

TransCanada submitted that until more information is made available with respect to the service requirements for the shipment of re-gasified LNG on the Mainline, it could not support the addition of St-Nicolas as a receipt point on the TransCanada system.

TransCanada submitted that EGD, Union and Gaz Métro had provided insufficient information about the LNG volumes, contracts and costs. Accordingly, TransCanada was unable to determine the operational and tolling impacts on either TQM or the TransCanada system required to assess the appropriateness of the existing toll design when LNG comes on-stream around 2008. TransCanada noted that Gaz Métro had not provided any indication of its expected Mainline contracting with the advent of LNG, and that without such knowledge, it was difficult to understand the degree to which TQM would continue to be used as part of TransCanada's integrated system.

TransCanada expressed the view that only the contracted capacity on TQM forms part of TransCanada's integrated system, not the entire TQM system. TransCanada noted that it is already possible for other parties to contract for service directly with TQM at St-Nicolas, and in such a case, this capacity would not form part of TransCanada's integrated system. TransCanada noted that Gaz Métro currently contracts for service directly from TQM.

TransCanada indicated that it understood the desire for certainty expressed by Gaz Métro, but noted that major projects like the Alliance pipeline and the Maritimes and Northeast pipeline lived with toll methodology uncertainty until their facilities applications were made and decided. TransCanada argued that it is far too simplistic to suggest that the toll from St-Nicolas to Dawn should be the same as the toll from Dawn to St-Nicolas, as such a suggestion fails to consider the contracts that underpin the TQM system. TransCanada noted that one impact of receiving large volumes of gas at St-Nicolas could be that TQM would need to take TBO capacity on TransCanada to move gas west.

TransCanada acknowledged that not all the information it sought of Gaz Métro through an information request, which mirrored the information required under section 52 of the NEB Act, would be required for TransCanada to evaluate a request. However, TransCanada submitted that this type of information would be needed in order to determine what facilities would be required

to accommodate flows from St-Nicolas, and that such information was necessary to the determination of appropriate tolls. TransCanada argued that the lack of such information illustrated how premature the request for a confirmation of the toll methodology was.

TransCanada maintained that it would be premature to make a determination concerning St-Nicolas, when the LNG project would not be a reality until 2008, if ever. TransCanada submitted that if the Board made the decision sought by Gaz Métro concerning St-Nicolas, the Board would be fettering the discretion that it would otherwise have when the time comes to actually make a decision on the LNG project.

TransCanada quoted the Board's GH-2-87 decision in support of the view that the proponents of St-Nicolas have the burden of proof. TransCanada submitted that the RH-R-1-2002 decision relied on by Gaz Métro was an exception, not the rule, as it applies to the return on equity formula implemented in the RH-2-94 decision, and that this decision is unique as the decision specifically stays in place until changed.

CAPP

CAPP disagreed with Gaz Métro's view that TQM is just an extension of the TransCanada system and expressed the view that the TQM TBO arrangement was like those of Union or GLGT. CAPP submitted that TQM is a distinct pipeline with an obligation to provide distinct services pursuant to the same requirements as TransCanada or any other North American pipeline subject to similar regulation. CAPP also submitted that the starting assumption should be that a new source of gas received on Union, GLGT, or TQM would be carried directly by that pipeline system. CAPP also noted that all three pipelines currently provide service directly to customers other than the Mainline. CAPP further rejected the suggestion that a receipt point should automatically be made on the TransCanada Mainline, and argued that such a determination should wait until all the facts are known, including details on the associated costs and benefits.

IGUA

IGUA submitted that St-Nicolas should not be added as a receipt point on the TransCanada Mainline, as there was no evidence adduced in this proceeding with respect to impacts on stakeholders of LNG shipments from St-Nicolas. IGUA submitted that tolling issues with respect to expanded facilities on TQM needed to deliver incremental LNG should be determined when all of the relevant circumstances are known, including impacts on the Mainline's stakeholders. IGUA further noted that St-Nicolas is located on the TQM system, and indicated that it is not opposed to the addition of St-Nicolas as a receipt point on the TQM system, once LNG is available.

Ontario

Ontario did not take a position on whether it is an appropriate time to designate St-Nicolas as a receipt point. Ontario noted that approval of St-Nicolas might help to facilitate negotiations for an LNG receiving terminal, but pointed out that EGD had indicated that deferring this determination would not impact its operations, or presumably, the operations of anyone else.

Quebec

Quebec submitted that Gaz Métro's desire for certainty justified the addition of St-Nicolas as a receipt point now, rather than waiting until a detailed hearing on the proposed facilities for a Quebec LNG project. Quebec also submitted that TQM is nothing more than an extension of the TransCanada system. Finally, Quebec argued that Gaz Métro's request to confirm the tolling methodology applicable from St-Nicolas was reasonable, amply justified, and in the best interests of natural gas consumers in Quebec.

5.5.3 Views of the Board

Scope of Relief Sought

Gaz Métro and EGD, supported by Union and Quebec, have asked the Board to approve a new receipt point for natural gas at St-Nicolas on the TQM system and to confirm that the tolls for service from St-Nicolas to points west will be based on the same toll design methodology as applies to other short-haul receipt points. The Board understands that, in making this request, Gaz Métro was not seeking relief regarding any facilities that may be required east of St-Nicolas, nor was it expecting the Board to predetermine the toll treatment of any future facilities to be added to the TQM or TransCanada system. Gaz Métro accepted that any new facilities would require further consideration pursuant to Parts III and IV of the NEB Act.

Designation of Receipt Point and Toll Treatment

The Board is confronted by the lack of clarity as to what information needs to be provided by a shipper in order for its request for a new receipt or delivery point to be fairly and responsively addressed by TransCanada. As discussed earlier in these Reasons, the Mainline tariff does not codify the information that needs to be supplied to TransCanada for a request to be processed, the criteria used by TransCanada for evaluating such a request, nor the amount of time required for the assessment of a request to be completed.

Furthermore, the Board is concerned that the standards applied to different requests may not be consistent. In the Board's view, it is imperative that information requirements and criteria for evaluation of receipt and delivery points be known, that they be fair to all parties seeking access, and that they appear to be fair. In the Board's view, the concerns expressed by Gaz Métro regarding TransCanada's request for detailed information on the status of any LNG projects in which Gaz Métro is involved underlines the need for clear information requirements, criteria and processes.

Since TransCanada's information requirements and criteria for evaluation were not set out in the Mainline tariff, Gaz Métro and EGD could not know what information TransCanada would require and what criteria TransCanada would apply in assessing their proposal to add St-Nicolas as a receipt point. Consequently, the information provided by Gaz Métro and EGD was not sufficient to allow TransCanada to properly evaluate the operational and tolling impacts of their request. The Board also finds itself in the position of having insufficient information to evaluate the impacts of St-Nicolas. It is not possible, therefore, for the Board to determine at this time that St-Nicolas should be designated as a receipt point, nor to establish the appropriate toll treatment.

The Board recognizes, however, that regulatory certainty with respect to tolls and tariffs may be of assistance to proponents of an LNG project. In previous decisions, the Board has cited the key role that toll design can play in determining the economic viability of a project and acceded to requests to approve the toll design for a service commencing at some point in the future.[7] Provided sufficient information is available to assess operational and tolling impacts, it is open to parties to seek approval of the toll treatment for future flows.

Degree of Integration of TQM with the Mainline

With respect to the views expressed by some parties that TQM is, or is not, fully integrated with the TransCanada Mainline for tolling and operations purposes, the Board is of the view that this is a matter which need not be disposed of in this decision. This clearly is not a matter over which parties had adequate notice that it might be adjudicated in this proceeding, and to express views on this matter at this time would be premature and unfair. In addition, a finding on this matter would require a body of evidence far more substantive than the limited references to it that were made during the hearing. Finally, the Board is of the view that the St-Nicolas receipt point can be fully addressed without adjudicating on this matter, as per our Reasons above.

Burden of Proof

In regard to the views expressed about the burden of proof and the onus that lies on applicants and intervenors in NEB proceedings, the Board is of the view that its approach to these matters is well established in the decisions referred to by counsel, and need not be revisited or modified in the context of this proceeding.

[7] See for example the RH-4-86 and RH-2-91 Reasons for Decision.

5.5.4 Views of D.W. Emes

As expressed elsewhere in these Reasons for Decision, I agree that the information requirements and criteria for evaluation of receipt and delivery points need to be codified in TransCanada's Mainline tariff. In addition, I concur with my colleagues that St-Nicolas can not be established as a receipt point, nor can the appropriate toll methodology be established, at this time. However, my reasons for coming to this view differ from those of my colleagues and are set out below.

Approval of Receipt Point

St-Nicolas is a point on the TQM system on which TransCanada's integrated system has contractual rights to transport gas. Gaz Métro submitted that TQM is fully integrated with the Mainline for tolling and operations purposes, and therefore can be considered as one system. Similarly, Quebec suggested that TQM is nothing more than an extension of the TransCanada system. In contrast, CAPP stated that TQM is a distinct pipeline which has an obligation to provide distinct services pursuant to the same requirements as TransCanada, or any other North American pipeline subject to similar regulation.

Based on the record in this hearing, I have not been persuaded that the contractual entitlement held by TransCanada on the TQM system differs in any substantive way from the contractual entitlements held by TransCanada on GLGT or Union. In my view, the fact that TransCanada is the only party to hold firm entitlement on TQM, or that the entitlement makes use of substantially all of the capacity on TQM, is not sufficient to outweigh the fact that TQM is a separate legal entity from TransCanada. Accordingly, the inclusion of St-Nicolas as a receipt point in the Mainline's tariff could, in effect, rule that TQM itself, and not the contract that TransCanada holds on TQM, forms part of TransCanada's integrated system. I do not find that the record of this hearing sufficiently addresses the impact of such a result or possible measures to insure that such a result would not occur.

If, however, I am wrong on the above, I am, nonetheless, of the view that the impacts of the inclusion of St-Nicolas as a receipt point on the TransCanada system have not been sufficiently evaluated. TransCanada is required to provide service according to the terms of the Mainline's tariff. Inclusion of St-Nicolas as a receipt point in the Mainline's tariff could indicate that TransCanada is obliged to accept any and all gas offered to it at that point. While the context for the majority of the discussion has been for LNG from the proposed Rabaska LNG project, about which some information is available, use of the St-Nicolas receipt point could not be limited to serving the Rabaska project.

Further, given that the flows from St-Nicolas would be from east to west, and likely represent large volumes, it is possible that these flows could have a substantial effect on the operation of the system. In my view, approval of St-Nicolas as a receipt point on the TransCanada sytem would, in effect, imply that the same terms and conditions should apply from St-Nicolas as from elsewhere on the system, and that TransCanada would be required to prove why it should not make any facility additions or modifications necessary to effect service from St-Nicolas. In effect, such an approval would shift the onus from a party whose proposal may have significant impacts on the system to show that access on the same terms and conditions as currently exist is just and reasonable to TransCanada being required to prove that such access is not just and reasonable. I find that the information available at present is insufficient for me to make such a determination.

In coming to this conclusion, I am aware that the Mainline's tariff includes East Hereford as a receipt point, although to date it has not been used for FT service. Given the concerns noted above, I would encourage TransCanada to assess the manner in which it includes this point in the Mainline's tariff and to make whatever changes are required.

Determination of Tolling Methodology

As indicated earlier, Gaz Métro and EGD have asked that the Board confirm that the tolls for service from St-Nicolas to points west will be based on the same toll design methodology as applies to other short-haul receipt points.

In my view, this request is premature. In the absence of more complete information about the impacts of receiving LNG at St-Nicolas, it is not possible to be certain that such toll treatment would be just and reasonable. The operational and engineering issues associated with receipt of LNG at St-Nicolas, and the potential effects of large volume flowing from east to west, have not been addressed. In this regard, I do not find that comparisons to Iroquois or East Hereford are persuasive since these points were designated as receipt points following requests for IT service, and no request for firm service using these locations as receipt points has taken place.

Accordingly, I do not find that I can make the confirmation of toll treatment requested by Gaz Métro and EGD.

5.5.5 Decision of the Board

Notwithstanding the differing views of Members, the Board's Decision is as follows:

> **The Board declines to designate St-Nicolas as a receipt point at this time.**
>
> **The Board also declines to grant the relief sought with respect to the applicable toll methodology from St-Nicolas.**

Chapter 6

Domestic Delivery Areas and Receipt Points

Issue 4 on the Board's List of Issues is "The appropriateness of offering Firm Transportation, Interruptible Transportation and Short Term Firm Transportation services using domestic delivery areas as receipt points." Most domestic toll zones contain a single delivery area. However, the Eastern Zone contains numerous distributors' delivery areas. Figure 6-1 delineates the Eastern Zone's distributors' delivery areas.

6.1 IT and STFT Services

TransCanada stated that it does and will continue to provide IT and STFT services using domestic delivery areas as receipt points. In TransCanada's view, this is appropriate primarily because the bulk of its domestic markets are weather sensitive and often require transportation of excess gas away from delivery areas in order to balance supply to consumption on both a seasonal and daily basis. Provision of IT and STFT service from domestic delivery areas is one way for TransCanada to meet this market need.

In support of its position, TransCanada noted that the provision of IT and STFT services from domestic delivery areas does not impact the determination of the zonal load centres and therefore does not impact other customers in the zone. Also, the additional revenue generated from these services is a benefit to all shippers.

EGD noted that it has used both IT and STFT for load balancing purposes; that is, to ship gas originally delivered to its CDA and EDA back to Parkway for delivery to Union and from there to storage at Dawn. EGD took the position, therefore, that it is still appropriate for TransCanada to offer IT and STFT services from domestic delivery areas.

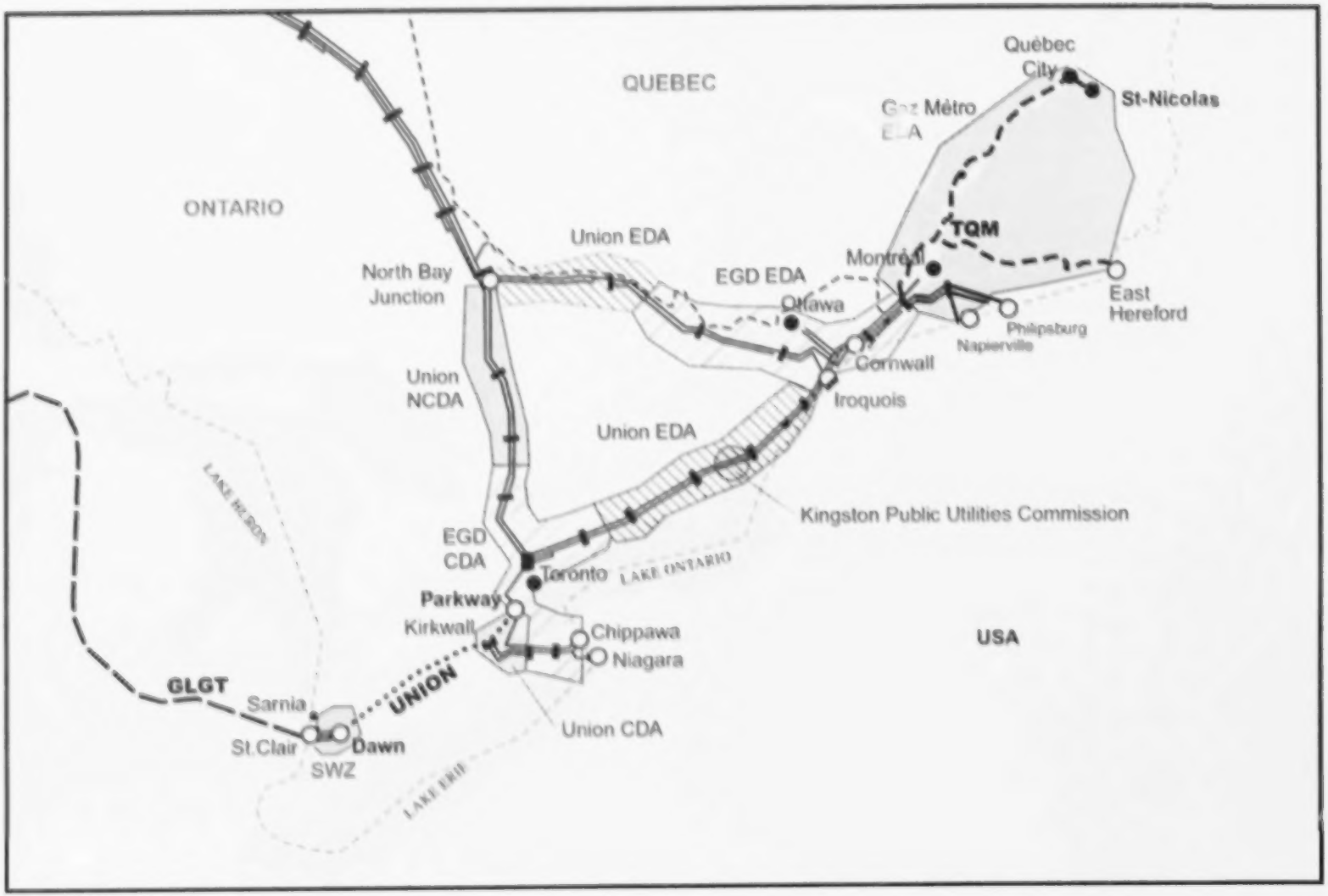
6.2 FT Service

TransCanada stated that it is reluctant to offer FT services using domestic delivery areas as receipt points for three reasons.

First, offering FT services with a receipt point located at any of the domestic delivery areas potentially introduces a significant increase in contracted segments on the pipeline. Given the number of potential contracted segments, it would be difficult to predict the contracting behaviour that may result.

Second, provision of FT services with a receipt point located at a domestic delivery area may also encourage the use of a particular delivery area as a trading location, which would result in service to the delivery area which is dissimilar to the service currently being provided to customers who consume gas there.

Figure 6-1
Eastern Zone Distributor Delivery Areas



Third, the use of a delivery area as a trading location may also result in a movement of the zonal load center as the trading activity changes over time, impacting customers in the zone, even though they may not be participating in the activity.

Accordingly, TransCanada's position is that prior to such a change being implemented, it must first be determined if the potential impacts are acceptable to TransCanada and its stakeholders and what alternatives exist to resolve the relevant issues. TransCanada argued that this is not an issue that can be addressed based on the record in this case.

In response to an information request, TransCanada stated that it does require Board approval to establish a new receipt and delivery point for contracting and tolling purposes, and the NBJ application is an example of that. However, TransCanada expressed the view that it would not require Board approval to offer services to and from established areas and points on its system.

6.3 EGD's Proposal for Storage Injection

EGD noted that access to FT service from domestic delivery areas for load balancing purposes was its top priority. EGD stated that it has a load balancing problem because direct purchasers or their marketers have migrated away from using EGD's long-haul FT service entitlements to deliver their gas to EGD's franchise areas. When these parties do so, EGD loses the right to combine FT service with STS to deliver gas to Dawn or Parkway in the summer season.

EGD submitted that IT and STFT services are unpredictable and not a permanent or reliable solution for EGD's load balancing problem. FT service, on the other hand, is predictable and reliable, so would be a better solution. Accordingly, EGD proposed that TransCanada offer FT service from domestic delivery areas and from the EGD CDA and EDA in particular, for storage injection purposes.

TransCanada stated that EGD's proposal raises a number of issues, such as how to identify those contract paths that qualified as storage injection paths and the criteria for establishing those paths. Further, TransCanada stated that it has no way of tracking transactions to ensure that the services are really being used to inject gas into storage. TransCanada noted that using FT service for storage injection purposes would be expensive because it would be used at a low annual load factor. It also noted that a new service designed to provide load balancing flexibility is presently before the TTF.

EGD acknowledged that it has been discussing a new bi-directional firm service with TransCanada; however, the details have not been worked out fully and the entire TTF has not yet endorsed the service. Therefore, EGD stated that it needs to have a better solution than IT and STFT waiting in the wings.

Gaz Métro supported EGD's proposal for resolving load balancing problems in EGD's franchise area. Gaz Métro noted that the proposal is limited to injections and withdrawals at the storage facilities, thus implying that the facilities could not be used for other purposes.

CAPP submitted that the issue of delivery area flexibility is before the TTF; there is a temporary solution in place (i.e., the use of IT and STFT from domestic delivery areas); and the issue

should continue at the TTF. CAPP expressed the view that access to storage and the flexibility related to access to storage are things that are needed by the market as a whole, not just by LDCs. CAPP argued that the solution should be focused on the broader market need.

6.4 Views of the Board

The Board notes that no party challenged TransCanada's position to offer IT and STFT from domestic delivery areas. In the Board's view, the provision of these services from domestic delivery areas is currently meeting a market need for load balancing and should be continued.

With respect to the offering of FT service from domestic delivery areas, TransCanada raised several concerns with providing this service related to the impact on tolls and the operation of the system. In the Board's view, TransCanada and its stakeholders would need to address these concerns before such a change could be implemented on a generic basis. The Board finds that the record of this proceeding is not sufficient to assess those concerns.

Furthermore, given the above-noted concerns, in the event that TransCanada would want to offer FT services from domestic delivery areas in the future, the Board is of the view that TransCanada would need to obtain the Board's approval prior to offering those services.

Concerning EGD's proposal to limit the offering of FT service from domestic delivery areas for storage injection purposes, the evidence is unclear as to whether the service could be limited in this way. Further, the proposal to limit this service to the EGD CDA and EDA raises the potential for unjust discrimination in that it would only allow these two delivery areas as receipt points, but not other delivery areas.

As discussed at the hearing, TransCanada and its shippers are working on a possible solution to address EGD's load balancing concern, such as a new bi-directional firm service. The evidence indicates that a new discrete service with its own terms and conditions may better meet the needs of the market for load balancing than the use of FT service. In the Board's view, the TTF process currently underway should continue to work out the details of a solution that will meet the needs of all shippers.

Decision

The Board approves the continuation of offering IT and STFT services using domestic delivery areas as receipt points.

The Board denies EGD's proposal that TransCanada offer FT service from the EGD CDA and EDA for storage injection purposes.

The Board rules that TransCanada must obtain approval of the Board prior to offering FT services from domestic delivery areas.

Chapter 7

Process for Change

In many of the letters of complaint that preceded the filing of the NBJ application, parties expressed concern with the manner in which TransCanada has introduced proposals for toll design changes on the Mainline. After examining these letters and the report following from the October 2003 workshop, the Board decided to provide parties with an opportunity to debate the process used to bring about toll design changes and included "The appropriate process for implementing toll design changes for the Mainline" as Issue 6 in the RH-3-2004 Hearing Order.

It became clear during the proceeding that parties were of the view that Issue 6 pertained to changes beyond the narrow scope of the Mainline's toll design and also included the processes for change which relate to the Mainline's terms and conditions of service regulated by the Board under Part IV of the NEB Act.

7.1 Process for Change – General Perspective

During the hearing, the Board questioned parties about the challenges faced in implementing or pursuing change on the Mainline. The Board also solicited feedback on the efficiency and effectiveness of the process currently used to pursue toll design changes, including the role and functioning of the TTF within this process. Finally, parties were asked to identify opportunities for process improvement which could be undertaken by parties and the Board.

7.1.1 Position of TransCanada

In its application, TransCanada described the process currently in practice for pursuing changes to Mainline toll design. First, TransCanada periodically identifies potential toll design changes, then discusses the proposed changes with its stakeholders. TransCanada then determines whether to bring the proposed change to the Board for approval. TransCanada noted that a similar process is available to any shipper who wishes to bring forward a proposed toll design change for consideration by TransCanada, fellow shippers and the Board. TransCanada maintained that the existing process for implementing toll design changes remains appropriate.

TransCanada stated that the usefulness of the TTF has changed significantly since its original inception. TransCanada submitted that the TTF remains a valuable tool for the discussion and implementation of minor tariff changes; however, when proposed changes involve competitive or strategic issues such as North Bay, the TTF is not a good vehicle to resolve such issues in an efficient and effective manner.

TransCanada submitted that a fundamental problem with the TTF is that its decisions need to be unanimous. Due to the diverse and sometimes competing interests of parties, it is increasingly difficult to achieve agreement. TransCanada explained that this is particularly true for toll design issues due to their distributional effect (i.e., one party's tolls go up while another's tolls

go down). TransCanada alleged that TTF processes are also sometimes used by competing interests to delay or complicate the resolution of issues.

TransCanada revealed the results of a recent survey which suggested that many parties consider the TTF to be neither efficient nor effective and indicated that it has initiated a discussion at the TTF to explore whether there are changes which could be undertaken to improve its effectiveness and increase the satisfaction of its membership. TransCanada suggested that one way to improve the process would be to change the voting mechanism inside the TTF.

TransCanada stated that it intends to use the TTF and other stakeholder forums as a means to interact with its shippers and to solicit stakeholder input into proposed changes. Such dialogue provides an indication as to the interest of stakeholders in further developing ideas, and whether TransCanada should expect support or opposition. This information will provide an input into the decisions of whether to continue developing a proposal, whether to go through the formal TTF process, and whether to file a proposal with the Board.

TransCanada asserted that it would prefer to come to the Board only as a last resort, but acknowledged that there may be instances where it is abundantly obvious that there will be no TTF solution.

When asked how the Board could help, TransCanada strongly encouraged the Board to expedite its decisions. It also expressed its view that the Board's ADR mechanism needs additional work.

Finally, TransCanada stated that it is not possible for a regulator to direct a negotiated solution. In TransCanada's view, the Board can encourage settlement, but it cannot compel it.

7.1.2 Positions of Parties

CAPP

CAPP acknowledged that the fundamental challenge faced when pursuing change on the Mainline is distributional issues, although from time to time, there may also be commercial or competitive issues.

CAPP expressed its belief that a collaborative effort should be made to address issues so that, if nothing else, affected stakeholders understand proposals before they come before the Board, thereby facilitating the regulatory process.

CAPP affirmed that the TTF has worked fairly well when dealing with standard tariff and toll designs; however, the TTF has never really dealt with fundamental change. For example, the 2001-2002 services and pricing settlement was dealt with by a separate stand-alone group and not tabled with the full TTF.

With respect to the TTF's voting rules, CAPP submitted that the voting procedure would be difficult to change because it was designed to mimic the rights, opportunities and due process that parties would have before the Board. Anyone is permitted to come to the Board and can invoke timelines within the TTF to do so in a timely manner.

CAPP submitted that a commitment to process is needed and that TransCanada should not ignore the collaborative process just because it thinks it will have a hard sell. Furthermore, CAPP contended, a collaborative process requires good information and rigour, just as the regulatory litigation process does. CAPP asserted that parties will push issues into hearings solely for the reason of garnering additional information.

CAPP submitted that the Board does not have the power to force people to work together, but it can require that they at least make the effort. With respect to ADR, CAPP believes that there are currently relatively well-experienced and skilled individuals representing all aspects of the industry, and if they cannot come to an agreement, there may not be much to be accomplished through arbitration or the use of a third party. Finally, CAPP expressed its belief that the Board should continue to act as the ultimate arbitrator on issues.

IGUA

IGUA believes that there is no specific single process which is appropriate for implementing toll design changes on the Mainline, but that it depends upon the significance of the proposed change.

EGD

EGD agreed that the fundamental challenge of pursuing change on the Mainline is the diversity of interests held by shippers. EGD submitted that the existing process is still appropriate, but acknowledged that it may not suit all circumstances.

Similar to CAPP, EGD expressed its belief that the TTF allows parties to increase their understanding of proposals, gain an appreciation of differing viewpoints, and resolve issues. Even if there is no resolution, a better understanding will have been achieved, thereby allowing for a reduction in the examination required at a subsequent regulatory proceeding.

EGD suggested that the TTF perform a self-examination to determine ways in which it could increase its effectiveness (e.g., allotting a specific time horizon for the discussion of some issues).

EGD suggested that if discussions at the TTF are limited to minor issues, this would undermine the effectiveness of the process. EGD stated that TransCanada should not have to divulge all of its strategic plans; however, it hoped that TransCanada would share proposals prior to an application being filed. Such discussions would allow TransCanada to tailor its approach prior to introducing a proposal straight into the regulatory arena.

EGD expressed its view that regardless of how small or few in number dissenting parties may be, parties must retain the right to bring their case before the Board. EGD also asked the Board to provide guidance to parties on what the Board's expectations are with respect to the TTF and its procedures.

Gaz Métro

In Gaz Métro's view, the diversity and the divergent interests of the stakeholders are the greatest challenges faced when trying to bring about change on the Mainline.

Gaz Métro expressed its view that while the TTF may not currently function as well as it could, it is a valuable forum that must be maintained. Gaz Métro suggested that the TTF might benefit from a self-examination during which it could try to find solutions. One area that could be examined is whether the TTF should designate a point at which proposals are either resolved or taken forward to the Board, thereby avoiding further futile effort and frustration. Gaz Métro also proposed that the TTF could consider whether to have two working levels: one for the mechanistic, day-to-day operations, and the other for more strategic matters.

Finally, Gaz Métro acknowledged that the first attempt at using ADR at the October 2003 workshop was perhaps not as successful as people would have hoped; however, Gaz Métro felt it was worth learning from and trying again, because the alternative of going to hearing is very expensive and resource intensive.

Union

Union cited the following as possible reasons why the TTF has not been as successful recently as in the past: parties do not have a road map upon which to anchor discussions; there has been a lack of transparency; and, there may not be alignment in terms of the specific issues with which parties need to deal.

Union believes that there is a need for the TTF, or some other forum, which would allow parties to discuss both minor and more significant matters. Union emphasized that the process of going through discussions and having information available allows parties to gain a deeper understanding of issues. Furthermore, if a regulatory proceeding is ultimately required, such an exploratory process will serve to better focus the proceeding.

CA

CA identified the diversity of interests and philosophies among the intervenor community and TransCanada as major impediments to pursuing change on the Mainline. CA also shared its belief that the TTF has an overwhelming bias towards the maintenance of the status quo because of the way the voting mechanism works and because of the nature of the parties involved.

CA was not convinced that any kind of process change at the TTF would be helpful. For example, CA does not believe that conversion to a majority vote mechanism would be appropriate, and doubts that others would support such a change. Finally, CA expressed doubt that the TTF would be successful at settling rate cases or issues of strategic significance.

CA suggested that the Board may want to encourage parties to formally enter into settlement discussions for large-scale proceedings as opposed to relying on only the TTF. CA described how other jurisdictions use a process whereby all evidence is filed, a discovery process occurs, and then parties are afforded an opportunity to discuss the written record and determine whether there is any possibility for agreement to occur on the issues. In such an environment, CA

submitted, parties are more focused and have a better understanding of the real issues. Furthermore, parties have the ability to challenge other parties, test arguments and develop a better sense as to their vulnerabilities. CA asserted that even in proceedings which look to be fairly rancorous and hotly contested, settlements are often possible because parties are focused and motivated to try harder knowing that the alternative is litigation.

At a minimum, CA suggested that if the Board keeps on doing what it is doing, writing well-reasoned decisions that lay out its expectations and its policy inclinations, then that, in and of itself, would be helpful to the overall process of resolving issues amongst parties.

Ontario

Ontario expressed the view that the TTF can play an important role in implementing changes to toll design and rejected TransCanada's notion that the TTF should be reserved only for non-strategic issues. According to Ontario, the TTF has the necessary representation and expertise to allow a critical review of such matters and, where appropriate, to resolve issues related to implementation.

Ontario urged that the TTF be utilized to review the toll design issues and service enhancements currently being contemplated by TransCanada prior to them being brought to the Board.

Along the same vein, Ontario submitted that the Board should encourage all parties to avail themselves of the TTF wherever possible, and to attempt to resolve toll design changes at the TTF prior to bringing them forward to the Board for adjudication.

7.2 Process for Change – Incremental versus Comprehensive Approach

7.2.1 Position of TransCanada

In its application TransCanada described how prior to and after 1998, it sought approval of various tariff changes in an effort to enhance the competitiveness of the Mainline and to increase the flexibility and range of options and services to customers. TransCanada also explained how its attempts to do so were often frustrated by stakeholder opposition and Board decisions.

Following the issuance of the RH-1-2002 Decision, TransCanada considered whether to continue pursuing a new, comprehensive business and regulatory model with its stakeholders. The model being considered would involve a comprehensive change to existing toll design, rates and services. TransCanada decided that it would not continue its efforts to develop a comprehensive business and regulatory model. Instead, it would work within its existing toll and tariff structure and propose changes from time to time as dictated by market changes and opportunities. The creation of the Southwest Zone was one such proposal; the NBJ proposal is another.

TransCanada noted that the NEB's traditional regulatory process affords TransCanada and other interested parties the opportunity to propose changes to the existing toll and tariff structure wherever they deem appropriate and that there is no requirement that a comprehensive master regulatory plan be filed along with each such application.

TransCanada expressed its belief that changes to its system, whether through negotiation or litigation, would best be achieved by smaller increments rather than one large comprehensive undertaking. TransCanada is of the view that it is easier for parties to understand issues and the associated tradeoffs when only one or a few elements are considered at a time.

Finally, TransCanada affirmed that the NBJ proposal is not, as some parties have suggested, the first step in a hidden agenda or master plan. TransCanada also contended that there is nothing on the record to substantiate such accusations.

7.2.2 Positions of Parties

CAPP

CAPP expressed its concerns with the utilization of the Mainline and its desire to understand how the pieces fit together within TransCanada's strategic vision for its system. CAPP argued that parties have the right to such information because they ultimately pay for TransCanada's mistakes. Finally, CAPP asserted that TransCanada's current practice of rolling out proposals one at a time is not orderly, does not build confidence and disregards the legitimate interests of stakeholders.

CAPP suggested that proposals for toll and tariff changes should follow the basic logic: what is the problem; what are the options; how are they better than the status quo; and, how should the chosen option be implemented. In CAPP's submission, TransCanada is not following such a model when pursuing change on the Mainline.

IGUA

IGUA submitted that the open season process commenced by TransCanada in July 2003, wherein it offered a broad array of segmented and short-haul services, was another attempt by TransCanada to pursue strategic directives while hoping that its stakeholders would not complain. IGUA contended that the reduced scope of TransCanada's subsequent application further illustrated TransCanada's tendency to develop applications in a piecemeal fashion.

IGUA stated that toll design changes which have a long-range effect of undermining the existing zonal toll structure should not be introduced in a "piecemeal" fashion, but only once any associated impacts have been thoroughly reviewed by the Board and approved as just and reasonable.

IGUA submitted that issues of fundamental importance to the Mainline's future operations should be considered within the context of TransCanada's overall business strategy for the Mainline. IGUA expressed concern over what it perceives to be TransCanada's abandonment of transparency with respect to its strategic direction and urged the Board not to countenance such an abandonment.

IGUA highlighted that the NBJ proposal is only one of many toll design enhancements being contemplated by TransCanada. IGUA further submitted that the NBJ proposal forms part of a broader business strategy for the Mainline which has not been disclosed. IGUA expressed its

concern over TransCanada's refusal to disclose the NBJ portions of the Consultant's Report, particularly as those portions factored into the Mainline's decision to abandon its pursuit of a new and comprehensive business strategy. IGUA submitted that Mainline strategic planning disclosure and transparency should be a prerequisite for Board consideration of NBJ because the latter is clearly part of a broader strategic plan.

EGD

EGD was of the view that a broader debate of issues should occur in advance of an application being filed. Among other things, this would allow parties to properly assess whether a proposal is part of a systematic plan.

EGD felt that there is no need at this time to extend the debate past what was brought forward in this hearing.

Gaz Métro

Gaz Métro recounted that during its argument in RH-1-2002, it proposed that TransCanada commit to making a real effort with its users and to submit, as part of a single proceeding, all toll changes that TransCanada intended to propose in the context of a new comprehensive business plan. Gaz Métro noted that TransCanada has since abandoned its plan to introduce a new business plan, choosing instead to pursue adjustments which work within its current tolling methodology and principles. Gaz Métro submitted that as long as TransCanada keeps its commitment to not file a new business plan in the coming years, Gaz Métro does not see the need to discuss all of TransCanada's proposed changes within a single proceeding.

Union

Union noted that TransCanada has had many opportunities to bring forward a comprehensive proposal to address market requirements, yet has not done so. Union further noted that TransCanada was unsuccessful at negotiating a settlement for comprehensive change with its stakeholders, but still retained the option of submitting to the Board an application for comprehensive change, but chose not to do so.

Union asserted that the resulting piecemeal approach is not acceptable. Union submitted that if TransCanada is unwilling to foster change in a way that provides it with the flexibility which it feels is necessary for it to compete, then the Board should be cautious of approving change proposals on a one-off basis driven solely by TransCanada.

Union requested the Board to comment on or provide direction to TransCanada on the need both for improved transparency and a vision as to where the Mainline is going.

7.3 Views of the Board

The Board appreciates the many comments it received from parties regarding the process for implementing toll and tariff design changes on TransCanada's Mainline. Based on these comments, a better understanding is emerging of the challenges faced by all parties and the

difficulties in resolving issues outside of the regulatory forum. These challenges appear to relate primarily to the diverse and competing interests of stakeholders. With the current TTF voting rules, it is unrealistic to expect that resolution to issues which involve winners and losers could always be resolved within the TTF. Accordingly, as stated in previous decisions, the Board stands ready to adjudicate issues which parties are unable to resolve amongst themselves. The Board recognizes that it cannot compel negotiated outcomes.

At the same time, the Board is not persuaded that the current process can not be improved. The Board agrees with those parties who suggest that information exchange prior to the formal regulatory process can act to facilitate the regulatory process by informing stakeholders of the proposal and narrowing the issues which require adjudication. While TransCanada has stated that it does discuss proposed changes with its stakeholders in the TTF or in some other manner, the record in this hearing indicates that there was minimal initial contact with stakeholders with respect to the NBJ proposal. Similarly, there was little to no discussion at the TTF of intervenors' alternative proposals. While this may be sufficient in some instances, when issues are complex and result in winners and losers, a broader exchange may be beneficial.

Therefore, the Board would encourage TransCanada and its stakeholders to develop an improved information exchange process. For ongoing information exchange, the Board notes the suggestion made by Gaz Métro that the TTF could consider having two working levels: one for day to day operations and a second for more strategic matters. With respect to specific applications, the Board notes the suggestion made by CA regarding formal settlement procedures to occur after all evidence is filed. Finally, the Board is aware that in some jurisdictions applicants sponsor workshops after the application is filed but before the information request process occurs in order to determine what issues can be settled and to focus the regulatory proceeding on those which can not. The Board notes CAPP's observation that there are well-experienced and skilled individuals on the TTF who represent all aspects of the industry. While, at this time, the Board is not prepared to make specific directions on how to improve information exchange, the Board expects that the industry can come together to establish a better process for the preliminary exchange of information.

As discussed in the Views of the Board in Section 5.3.4, the Board would prefer to see proposed changes framed within as broad a context as possible. While the Board accepts that it is within management's discretion to determine that the implementation of incremental changes to TransCanada's system is preferable to comprehensive change, the Board re-iterates that the absence of context makes the evaluation of specific incremental proposals difficult. At a minimum, the Board agrees with

CAPP that proposals for toll and tariff changes should identify the problem to be solved, the options available including the status quo, the benefits and drawbacks of each option, and a plan for implementing the chosen option.

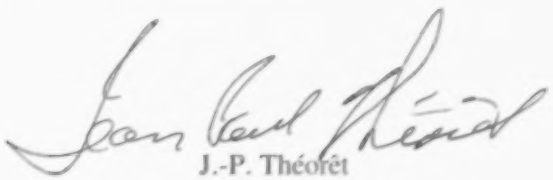
In addition, the Board would encourage TransCanada to share with its stakeholders its evolving vision for the Mainline and to involve its stakeholders in shaping that vision.

In summary, the Board would like to see parties employ collaboration, consultation and creativity in their dealings with each other. In particular, the Board would like to see an effective and timely exchange of information between parties and a genuine attempt to discuss issues prior to the formal regulatory process in order to identify solutions that result in benefits to all parties or, at a minimum, identify those issues where adjudication is required. If this occurs, the Board is persuaded that the strained relationships it observed in this proceeding will be ameliorated.

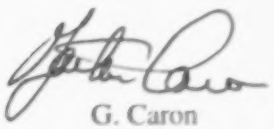
Chapter 8

Disposition

With the exception of Section 5.5.4, the foregoing chapters and Order TO-7-2004 constitute our Decision and Reasons for Decision in respect of the North Bay Junction application and all matters heard by the Board in the RH-3-2004 proceeding.

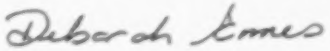


J.-P. Théorêt
Presiding Member



G. Caron
Member

With the exception of Section 5.5.3, the foregoing chapters and Order TO-7-2004 constitute my Decision and Reasons for Decision in respect of the North Bay Junction application and all matters heard by the Board in the RH-3-2004 proceeding.



D.W. Emes
Member

Calgary, Alberta
December 2004

Appendix I

Toll Order TO-7-2004

ORDER TO-7-2004

IN THE MATTER OF the *National Energy Board Act* and the Regulations made thereunder; and

IN THE MATTER OF an application by TransCanada PipeLines Limited (TransCanada) dated 15 September 2003, as amended 31 March 2004, pursuant to paragraph 60(1)(b) of the NEB Act, for approval to establish a new receipt and delivery point, the North Bay Junction (NBJ), and the corresponding tolls for services to and from the point, as well as to remove North Bay from the existing Northern Delivery Area described in Section X, Subsection 1, of TransCanada's Mainline Transportation Tariff General Terms and Conditions, all effective 1 November 2004; and,

IN THE MATTER OF Hearing Order RH-3-2004.

BEFORE the Board on 13 December 2004;

WHEREAS TransCanada filed an application dated 15 September 2003, for approval to establish the North Bay Junction (NBJ) as a new receipt and delivery point, and for approval of the associated tolls for services to and from this point;

AND WHEREAS on 14 November 2003, the Board identified six issues for consideration with respect to the application and decided to stay the processing of the application until such time as TransCanada filed sufficient information to address these issues;

AND WHEREAS on 31 March 2004, TransCanada amended its application;

AND WHEREAS on 19 April 2004, the Board issued Hearing Order RH-3-2004;

AND WHEREAS an oral public hearing was held on 16, 17, 18, 19, 20, 24, 25, 26, 27, 30, 31 August 2004 and 1, 2 September 2004 in Montreal, Quebec and on 8, 9, 10 September 2004 in Calgary, Alberta, during which time the Board heard the evidence and argument presented by TransCanada and all interested parties to the proceeding;

AND WHEREAS the Board's Decisions on the NBJ application and on the other issues heard during the RH-3-2004 proceeding are set out in its RH-3-2004 Reasons for Decision dated December 2004, and in this Order;

AND WHEREAS the Board has considered the evidence and the submissions and has found that the tolls to be charged by TransCanada in accordance with this Order are just, reasonable and not unjustly discriminatory;

THEREFORE, IT IS ORDERED, pursuant to paragraph 60(1)(b) and other relevant sections of the NEB Act, that:

1. Effective 28 February 2005:

   a) North Bay Junction is designated as a receipt and delivery point on the TransCanada Mainline;

   b) the corresponding tolls for services to and from the North Bay Junction are established in accordance with the current tolling methodology and as described in the NBJ application;

   c) the facilitating amendments, as filed by TransCanada during the proceeding, are made to Section III, Subsection 1 of TransCanada's Mainline Transportation Tariff General Terms and Conditions; and,

   d) North Bay is removed from the existing Northern Delivery Area described in Section X, Subsection 1 of TransCanada's Mainline Transportation Tariff General Terms and Conditions.

2. TransCanada shall file, no later than 28 February 2005, proposed additions to the Mainline tariff codifying the information TransCanada requires, the criteria to be applied by TransCanada, and the expected timeframe required by TransCanada to evaluate and respond to proposals for new receipt and delivery points.

3. TransCanada shall file with the Board and serve on the Mainline shippers, TTF members and parties to the RH-3-2004 proceeding all revisions to the Mainline tariff necessary to conform with the decisions outlined in the RH-3-2004 Reasons for Decision and with this Order.

4. TransCanada shall file, no later than 1 March 2007, a report on the use of NBJ.

5. TransCanada shall obtain approval of the Board prior to offering FT services from domestic delivery areas.

NATIONAL ENERGY BOARD

Michel L. Mantha
Secretary

ERRATUM

NATIONAL ENERGY BOARD

Reasons for Decision
TransCanada PipeLines Limited

RH-3-2004

In the above Reasons for Decision the Order number on pages ii, 73 and 74 should read "TG-7-2004".

Calgary, Alberta
December 2004

Michel L. Mantha
Secretary